SEARCH AND SEIZURE

The article IV, section 5 right to be secure against searches is not absolute. The Constitution only protects against unreasonable searches. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

The constitutional protection of the individual against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

Constitutional protection against unreasonable searches extends to the contents of closed containers within one's possession and to those items one carries on one's person. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

A citizen is entitled to protection of the privacy which he seeks to maintain even in a public place. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

The burden is on the government to justify a search without a warrant. FSM v. Tipen, 1 FSM R. 79, 87 (Pon. 1982).

The legality of a search must be tested on the basis of the information known to the police officer immediately before the search began. FSM v. Tipen, 1 FSM R. 79, 88 (Pon. 1982).

When investigating officers have reason to believe that somebody on private premises may have information pertaining to their investigation, they may enter those private premises, without a warrant or prior judicial authorization, to make reasonably nonintrusive efforts to determine if anybody is willing to discuss the substance of their investigations. FSM v. Mark, 1 FSM R. 284, 288 (Pon. 1983).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Mark, 1 FSM R. 284, 298 (Pon. 1983).

Mere observation does not constitute a search. The term "search" implies exploratory investigation or quest. FSM v. Mark, 1 FSM R. 284, 289 (Pon. 1983).

Police officers who in the performance of their duty enter upon private property without an intention to look for evidence but merely to ask preliminary questions of the occupants cannot be said to be conducting a search within the meaning of the Constitution. FSM v. Mark, 1 FSM R. 284, 289 (Pon. 1983).

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a

search. FSM v. Mark, 1 FSM R. 284, 290 (Pon. 1983).

The starting point and primary focus of legal analysis for a claim of unreasonable search and seizure should normally be the Constitution's Declaration of Rights, not the statutory "Bill of Rights." FSM v. George, 1 FSM R. 449, 455 (Kos. 1984).

The principal difference between FSM Constitution article IV, section 5 and 1 F.S.M.C. 103 is that the Constitution, in addition to prohibiting unreasonable searches and seizures also contains a prohibition against invasions of privacy. FSM v. George, 1 FSM R. 449, 455 n.1 (Kos. 1984).

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM R. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Constitutional prohibitions against unreasonable searches, seizures or invasions of privacy must be applied with full vigor when a dwelling place is the object of the search. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Article IV, section 5 of the FSM Constitution, based upon the fourth amendment of the United States Constitution, permits reasonable, statutorily authorized inspections of a fishing vessel in FSM ports, under various theories upheld under the United States Constitution, when the vessel is reasonably suspected of having engaged in fishing activities. Ishizawa v. Pohnpei, 2 FSM R. 67, 74 (Pon. 1985).

It is extraordinarily difficult for law enforcement authorities to police the vast waters of the Federated States of Micronesia. Yet, effective law enforcement to prevent fishing violations is crucial to the economic interests of this new nation. Accordingly, the historical doctrines applied under the United States Constitution which expand the right to search based upon border search, administrative inspection and exigent circumstances theories, appear suitable for application to fishing vessels within the Federated States of Micronesia. Ishizawa v. Pohnpei, 2 FSM R. 67, 74 (Pon. 1985).

Searches and seizures both constitute a substantial intrusion upon the privacy of an individual whose person or property is affected, but a seizure often imposes more onerous burdens. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

While the power to seize a vessel is crucial to the interests of the Federated States of Micronesia and its states, there are also compelling factors demanding that seizures take place only where fully justified and that procedures be established and scrupulously followed to assure that the power to seize is not abused. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Where defendants accompanied police officers, then defendants entered their homes and obtained the stolen goods and turned them over to the police, the question of whether there has been an unreasonable seizure in violation of article IV, section 5 of the Constitution turns on whether the defendants' actions were voluntary. FSM v. Jonathan, 2 FSM R. 189, 198-99 (Kos. 1986).

The prohibition in article II, section 1(d) of the Constitution of Kosrae against any unreasonable search and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy and courts must protect this right from well-intentioned, but unauthorized, governmental action. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

An individual's home, even one located on public land, qualifies for constitutional protection against warrantless searches. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

The protection in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure is based upon the comparable provision in the fourth amendment of the United States Constitution. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

Although an individual acting without state authorization has constructed a sleeping hut and has planted crops on state-owned public land, state police officers may nevertheless enter the land without a search warrant to make reasonable inspections of it and may observe and seize illegally possessed plants in open view and plainly visible from outside the sleeping hut. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

When investigators, acting without a search warrant on advance information, conduct searches in privately owned areas beyond the immediate area of a dwelling house, and seize contraband, they do not thereby violate the prohibitions in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure. FSM v. Rosario, 3 FSM R. 387, 388-89 (Pon. 1988).

The standard for engaging in a search of private property is less exacting than the standard required for seizing such property. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588 n.4 (Pon. 1994).

For purposes of article IV, section 5 protection, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. Thus, the constitutional protections do not attach unless the search or seizure can be attributed to governmental conduct *and* the defendant had a reasonable expectation of privacy in the items searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 142 (Pon. 1995).

Administrative searches designed to aid in the collection of taxes rightly owing to the government must be conducted according to the same requirements laid down for other searches and seizures. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 142 (Pon. 1995).

An administrative agency may either request certain records be provided or formally subpoena the desired information, rather than obtain a court-ordered search warrant. In either situation, the subject of the inspection may decide whether to refuse or cooperate with the government's request. Only when a person refuses to permit the requested search does the Constitution prohibit the administrative agency from coercing that person to turn over records without first obtaining a valid search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

Where a person refuses to cooperate with the inspection requests of the administrative agency, the government will be required to demonstrate to a neutral and detached magistrate that the requested material is reasonable to the enforcement of the administrative agency's statutory responsibilities and that the inspection is being conducted pursuant to a general and neutral enforcement plan in order to obtain the required search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM R.

256, 258 (Chk. 1995).

The Chuuk Constitution protects persons from an unreasonable invasion of privacy. The right to privacy depends upon whether a person has a reasonable expectation that the thing, paper or place should remain free from governmental intrusion. A person's right to privacy is strongest when the government is acting in its law enforcement capacity. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM R. 261, 267 (Chk. S. Ct. Tr. 1995).

Persons are secure in their persons, houses, and possessions against an unreasonable invasion of privacy. An invasion of privacy occurs when the government intrudes into any place where the individual harbors a reasonable expectation of privacy. A claim to privacy must be viewed in the specific context in which it arises. In re Legislative Subpoena, 7 FSM R. 328, 334 (Chk. S. Ct. App. 1995).

An person's expectation that his bank records will remain private is not reasonable because bank records are not the person's private papers, but are the bank's business records. This does not mean that such records are open to unrestrained production and inspection. For such records to be produced or inspected, the purpose of the intrusion must not be unreasonable. In re Legislative Subpoena, 7 FSM R. 328, 335 (Chk. S. Ct. App. 1995).

Apprehension of a person suspected of committing a crime by use of deadly force is a seizure, but the shooting of a bystander, who is not a suspect, by the police is not. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

A person can only complain of an unlawful search or seizure if it is his own rights which have been violated, such as when the person had ownership or a possessory right to the place searched, or was the owner of the items seized. A person also has standing to challenge a search and seizure of items as illegal when possession is an element of the crime charged, or when the person is legitimately on the premises searched and fruits of the search are to be used against him. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 553 (Chk. 1996).

A vessel arrested pursuant to a warrant has, upon request, a right to a post-seizure hearing to contest the warrant and any deficiency in the arrest proceeding. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556 (Chk. 1996).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM R.

555, 557 (Chk. 1996).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

When a warrantless search or seizure is conducted the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Joseph, 9 FSM R. 66, 69 (Chk. 1999).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Joseph, 9 FSM R. 66, 69 (Chk. 1999).

The border search doctrine is suitable for application to fishing vessels in the FSM. The principle should be the same for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 n.2 (Chk. 1999).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Passing through security screening and boarding a foreign-registered airplane in Pohnpei that has arrived from a foreign country without it and its cargo having cleared customs in the FSM and whose passengers have not cleared immigration in the FSM, unless they deplaned, is passing out of and across a functional border of the FSM. The same passenger landing in Chuuk and entering the customs inspection area is crossing a functional equivalent of a border back into the FSM. FSM v. Joseph, 9 FSM R. 66, 70-71 (Chk. 1999).

Because entering the Chuuk International Airport customs inspection area after deplaning from a through flight is crossing the functional equivalent of a border a warrantless search there is reasonable under section 5 of the FSM Declaration of Rights. This analysis is consistent with

the geographical configuration of Micronesia, with the statutory schemes of agricultural inspection, and customs inspection. FSM v. Joseph, 9 FSM R. 66, 71 (Chk. 1999).

An airport inspection of arriving passengers and their luggage does not violate an FSM citizen's right to travel within the FSM and the right to privacy. FSM v. Joseph, 9 FSM R. 66, 71 (Chk. 1999).

A search and seizure at the police station of an arrestee's possessions is not the unlawful fruit of the poisonous tree when the arrest was lawful. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon the comparable provision in the U.S. Constitution's fourth amendment. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Once the police have a reasonable suspicion that a person may be armed and dangerous they may do a patdown search of or frisk that person for weapons in order to protect themselves and others from possible danger. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

In order for a warrant or a criminal summons to issue, the affidavits, or affidavits and exhibits, attached to a criminal information should make a prima facie showing of probable cause, not proof beyond a reasonable doubt. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, 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. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy. The FSM Supreme Court, mindful of these principles, must protect these rights from well-intentioned, but unauthorized, government action. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 250 (Pon. 2003).

Article IV, section 5 of the FSM Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure or invasion of privacy may not be violated." For article IV, section 5 purposes, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 250 (Pon. 2003).

When an officer has made a warrantless arrest by relying upon a tip from an informant, the reviewing court will evaluate the tip based upon the totality of the circumstances, including the informant's truthfulness and reliability, and the basis of his or her knowledge. Deficiency in one prong may be compensated for by a strong showing of the other. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant, but there may be one exception to this rule, however, and that is when a routine felony arrest takes place inside the suspect's home and there are no exigent circumstances (an emergency or a dangerous situation) to overcome the warrant requirement. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 n.4 (Pon. 2005).

The prohibition in Article II, Section 1(d) of the Kosrae State Constitution against any unreasonable search and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The constitutional protection against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. The burden is on the government to justify a search without a warrant and the search's legality must be tested on the basis of the information known to the police officer immediately before the search began. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

When all warrants, monitoring orders, and subpoenas duces tecum were served or executed on either the Bank of Guam or the Bank of the Federated States of Micronesia, a defendant's motion to suppress those warrants, monitoring orders, and subpoenas duces tecum and any evidence seized pursuant to those search warrants as the fruits of illegal searches will be denied since the defendant lacks standing to challenge the searches of those bank records because he lacks an expectation of privacy therein. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon and drawn from the comparable provision in the U.S. Constitution's fourth amendment. The addition of the phrase "invasion of privacy" to the FSM version was not intended to expand the search and seizure protections in the FSM any further. It was intended

to more adequately express its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

Evidence obtained as the result of violations of Title 12 is not admissible against an accused. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. The constitutional provision barring the invasion of a person's privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

For actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; and 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Louis, 15 FSM R. 348, 351 (Pon. 2007).

In order for a search to take place the police officers' intention to discover contraband or evidence is not enough. There also must be 1) an examination of premises or a person and 2) in a manner encroaching upon one's reasonable expectation of privacy. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the evidence before the court plainly shows that the officers did not conduct an examination of any premises or person but approached the funeral at a neighbor's house, asked for Louis, and Louis came out and then Louis directed the officers to his office in Palikir and upon arrival in Palikir, the police remained in the vehicle, while Louis went to his office and returned with the handgun. Under these facts, a search cannot be said to have taken place. It also cannot be said that the officers encroached upon Louis's reasonable expectation of privacy. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

Various arguments concerning a lack of probable cause, including the discrepancy in the dates cited for his arrest – either January 5, 2005, as cited in the accompanying affidavit, or January 6, 2005, as cited in the police reporter introduced as evidence during the hearing are simply misplaced at this point. FSM v. Tosy, 15 FSM R. 463, 465-66 (Chk. 2008).

Where the court finds that an accused's statement was voluntarily made after he had been informed of, and understood his rights, and chose to waive those rights, that will not end the analysis if the accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, because the burden is on the prosecution to show that the evidence is still admissible. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When the defendant's advice of rights form waiving his rights was dated the day after his arrest and when the government presented no evidence as to the time of day on that the defendant made his statement on the day following his arrest or as to whether the statement was made within 24 hours of his arrest, the statement will be suppressed because once the defendant has established the government's unlawful act, it is the government's burden to show that the challenged evidence was not the result of that unlawful act. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When no search or arrest warrant had been issued or sought and the defendant moves to

suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the seizures were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress the evidence against an accused on the ground that the evidence was obtained as the result of "an arrest that was not in compliance with the law" is not sufficiently particular since it does not indicate the reason(s) why the accused asserts that the arrest was illegal. A suppression movant must articulate in his motion with sufficient particularity the specific reason on which he bases his claim that the seizure was illegal, and a written motion to suppress evidence must specify with particularity the grounds upon which the motion is based. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

Grounds for relief in broad and literal conclusory terms, such as a conclusory statement in an accused's suppression motion that his arrest was not in compliance with the law, are, without more, insufficient to raise a suppression question. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress is, in effect, a pleading to the extent that it frames the issues to be determined in a pretrial hearing on the motion. The fundamental role of a pleading is to give an opposing party notice of the pleader's position concerning the facts and law so that the opposing party can begin to prepare his defense. A pleading thus both defines and limits the areas of consideration at a trial or other evidentiary hearing. Furthermore, the pleading assists the court in the conduct of the hearing. For example, by enabling the court to determine the relevance of the offered evidence. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

At least as much specificity should be required in a pretrial objection to the admissibility of evidence, i.e., a motion to suppress, as is required in an oral objection made during the course of a trial. In fact, even more specificity could reasonably be required because the pretrial objection can be researched and written under relatively calm circumstances, as distinguished from an extemporaneous objection made in the heat of trial. Broadly worded and vague objections are inappropriate in either context. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

When, after the accused had been questioned for some time without being informed of his rights, the accused went into his residence, retrieved a handgun and five shells, and came out and turned the gun and ammunition over to the officer, the firearm was not seized as the result of an illegal search because the police officer did not conduct a search of the residence or even enter it, but since the accused's surrender of the handgun and ammunition was the result of the officer's questioning and the incriminating statements made when the accused was interrogated without having been informed of his rights, the handgun and ammunition are thus inadmissible as they are the fruit of the poisonous tree. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

An individual's constitutional protection against unreasonable searches and the limitation of police powers apply wherever an individual may harbor a reasonable expectation of privacy. For actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or

at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Sapusi, 16 FSM R. 315, 317 (Chk. 2009).

When the police officer did not enter the accused's home or any house in which he was staying; when there was no evidence that the accused had an expectation of privacy in anything present in another's house that was entered; when there was no evidence that the accused resided there, or that he stayed there intermittently, or that he had permission to leave any personal items there, or that he had permission or authority to enter and use the house, or even that the bag seized was his; when there is also no evidence about how the other came to have possession of the pistol and ammunition; when the accused does not claim a property interest in the pistol and ammunition or the bag; and when the accused also was not present in the house when the police officer entered it, the accused lacks standing to object to the entry of the house and the seizure of the pistol and ammunition after the other gave the bag it was in the the officer. FSM v. Sapusi, 16 FSM R. 315, 317 (Chk. 2009).

Exigent circumstances may make it necessary or constitutionally reasonable to proceed with a search without first obtaining a warrant. Exigent circumstances are present when a police officer has heard three gunshots fired in a residential area since people's lives could have been in danger if more shots were fired and when the officer did not know who was firing and had no reason to know whether more would be fired. Thus, exigent circumstances existed that required the officer to investigate the possible sources of the gunfire. FSM v. Sapusi, 16 FSM R. 315, 318 (Chk. 2009).

Since the FSM Constitution's Declaration of Rights protection against unreasonable search and seizure is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. authority may be consulted to understand its meaning. FSM v. Aliven, 16 FSM R. 520, 527 n.2 (Chk. 2009).

For the purposes of FSM Constitution article IV, § 5, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. For actions to constitute a search, there must be: 1) an examination of a premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in the prosecution of a criminal action. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

The FSM Constitution guarantees that the right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. This protection prohibits the police from making a warrantless and nonconsenual entry into a suspect's home in order to make a routine felony arrest. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision (such as Section Five of the Declaration of Rights which is patterned after the U.S. Constitution's Fourth Amendment), U.S. authority may be consulted to understand its meaning. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.4 (Pon. 2012).

Merely entering a person's property is often not enough to violate a person's right to be secure in her house. For instance, if the police do not enter the home but wait for the occupant to emerge from the house before effecting an arrest, the right is not violated. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

A test for whether a particular area is constitutionally protected from unreasonable searches and seizures is whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Under this test, section five certainly protects a person's shower house area as the nature of its use is one in which there is a high expectation of privacy. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.5 (Pon. 2012).

When the officers told the plaintiff, while she was still in her shower house, that they were there to arrest her and once the officers told her that that was what they were there for, she was not free to leave except in their custody. In other words, the police arrested her while she was in her shower house even though they were outside. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

It is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home. When the plaintiff was arrested while she was in an area protected by Section five of the Declaration of Rights (her shower house) and when the police did not have a warrant, her arrest was illegal because the police needed a warrant to arrest her where they did and they did not have one. Alexander v. Pohnpei, 18 FSM R. 392, 398-99 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The Chuuk Legislature can grant a state administrative agency the power to levy in the manner of a levy of an execution for statutory liens held by the state so long as due process concerns are addressed by such mechanisms as a prompt post-levy (or post-execution) hearing being available. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

A Customs officer has the right to examine all goods subject to Customs control, and among the goods subject to Customs control are all goods for export, from the time such goods are brought to any port, airport, or other place for export until their exportation to any country outside of the FSM. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A facility that is not itself a port or airport, but is in close proximity to both the port and airport, can be considered an "other place for export" to the extent that it is a container yard – it stores packed containers ready for shipment abroad. In re Wrecked/Damaged Helicopter, 22

FSM R. 447, 461 (Pon. 2020).

That an examination was not done by a customs officer, but by the national police, a different FSM law enforcement agency, but one that is tasked with the general enforcement of all FSM national law, instead of the narrow specialized area that customs officers are restricted to, should not invalidate the examination when it was one that was permissible for Customs officers to do. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

Ports, airports, and other places for export such as a container yard are functional equivalents of a border. Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

– By Consent

The Ponape state consent statute does not authorize the search of a nonconsenting bar or restaurant customer. Pon. Code. ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM R. 79, 81 (Pon. 1982).

Under Ponape state law, a bar or restaurant patron's denial of an authorized person's request to search the person of the patron merely subjects the patron to exclusion from the establishment. Pon. Code ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM R. 79, 81 (Pon. 1982).

The government bears the burden of proving the existence of voluntary consent. Acquiescence in the desire of law enforcement personnel to search will not be presumed but must be affirmatively demonstrated. FSM v. George, 1 FSM R. 449, 456 (Kos. 1984).

A demand, even if courteously expressed, is different from a request, and a citizen's compliance with a police officer's demand, backed by apparent force of law, is perhaps subtly, but nonetheless significantly, different from voluntary consent to a request. FSM v. George, 1 FSM R. 449, 458 (Kos. 1984).

On matters relating to a warrantless search, it is for the court to decide whether voluntary consent, as opposed to passive submission to legal authority, occurred. The government must put before the court facts, not mere conclusions of police officers, which will permit the judge to decide whether consent was given. FSM v. George, 1 FSM R. 449, 458 (Kos. 1984).

The unconsented and warrantless entry into defendant's house, without any subsequent action on the officer's part to impress upon the defendant that they could be influenced by his wishes as to whether a search might be conducted, erases any possibility of finding any aspect of the search in the house or the resultant seizure of evidence, to be either consented to or untainted. FSM v. George, 1 FSM R. 449, 459 (Kos. 1984).

Officers entering a house by consent for purposes of a search must keep in mind the eventual likelihood that they will need to establish that consent was voluntary. FSM v. George, 1 FSM R. 449, 463 (Kos. 1984).

Only under rare circumstances would the FSM Supreme Court likely find that a homeowner who neither says nor does anything to indicate affirmative consent has consented to a warrantless search of his house. FSM v. George, 1 FSM R. 449, 463 (Pon. 1984).

To determine whether a search is reasonable, the Kosrae State Court will be guided by the principle that, with the exception of a few carefully defined types of cases, any search of private property without proper consent is unreasonable, unless previously authorized by a valid search warrant. Kosrae v. Alanso, 3 FSM R. 39, 43 (Kos. S. Ct. Tr. 1985).

The Kosrae State Court, consistent with U.S. and FSM precedent, recognizes consent as a valid exception to the need for a search warrant. However, consent is understood to be an informed and voluntary relinquishment of a known right and the burden will be on the government to show that there was consent. Kosrae v. Alanso, 3 FSM R. 39, 43 (Kos. S. Ct. Tr. 1985).

To protect the right to be free from unreasonable search and seizure, this court requires clear proof, not merely that consent was given, but also that a right was knowingly and voluntarily waived. It is fundamental that a citizen be aware of the right he is giving up in order for consent to be found. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

In an administrative agency inspection, as in any other governmental search and seizure, a warrant is unnecessary where the government obtains the voluntary consent of the party to be searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

If a police officer had permission to search a home, then no warrant was necessary; if he needed a warrant, then he did not have permission to enter the house. Consent to conduct a search must be proven by a preponderance of the evidence. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 497 (Pon. 2005).

When no search took place, it is unnecessary for the court to decide whether the defendant gave his consent. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

The FSM Constitution's prohibition against "unreasonable searches and seizures" generally requires the police to obtain a search warrant by showing probable cause to believe that a search will uncover evidence of contraband or a crime. However, there are certain well delineated exceptions to having a valid warrant prior to commencing a search under FSM Const. art. IV, § 5. One such exception arises when a person authorized to give consent does so prior to the initiation of the search. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

FSM Constitution article IV, § 5 requires the police to prove that consent to perform a search was given voluntarily and was not the product of duress or coercion. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

FSM Constitution article IV, § 5 protects FSM citizens against unreasonable searches and seizures. There is a legitimate need, under certain circumstances, for FSM law enforcement officers to perform searches based on an individual's voluntary consent since such searches are often the only means available to obtain important and reliable evidence, and may result in considerably less inconvenience for the subject of the search than other means by which to

obtain the sought-after evidence. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

A search pursuant to consent often occurs under informal conditions in which the due process considerations inherent in a custodial interrogation or criminal trials do not apply. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

FSM Constitution article IV, § 5 contains no requirement that law enforcement officers inform a consenting individual that he has the right to refuse to give consent. Instead, to ensure that consent not be coerced, by explicit or implicit means, by implied threat or covert force, the court will consider the "totality of the circumstances" to determine whether a criminal defendant's consent was voluntarily given. In doing so, any searches that are the product of law enforcement coercion can be filtered out without undermining the continuing validity of consent searches. FSM v. Phillip, 17 FSM R. 413, 423-24 (Pon. 2011).

When, of foremost importance, an officer asked the defendant whether they could look inside the backpack, he said, "Yes"; when there was insufficient evidence showing that the officers involved intimidated or harassed the defendant into making his response; when the officers did not brandish weapons, threaten him, or make any intimidating movements; when they were dressed in street clothes, not public safety uniforms, and were not carrying weapons; when the officers were also known to the defendant; and when, while the officers did not advise the defendant that he could refuse consent, that knowledge of the right to refuse consent is not mandatory for a valid consent search to occur, the court will find, based on its examination of the totality of the circumstances, that the defendant voluntarily consented to the search of the backpack. FSM v. Phillip, 17 FSM R. 413, 424 (Pon. 2011).

In situations where law enforcement have some evidence of illegal activity but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence. FSM v. Phillip, 17 FSM R. 413, 424 (Pon. 2011).

When, under the circumstances, it was objectively reasonable for the officers to believe that the scope of the suspect's consent permitted them to remove items from the his backpack and open closed containers because a reasonable person would have believed that to "look inside" a backpack may well necessitate the removal of certain items from the backpack; when the defendant gave his consent to also search the Tupperware container and there was no evidence to suggest that he attempted to limit the scope of the officers' search when they began removing items from the backpack; when the defendant was present when the search was conducted; and when the officers were searching for marijuana, and a reasonable person may be expected to know that marijuana is generally transported in some form of container, the officers' search of the Tupperware container within the defendant's backpack was reasonable because the defendant gave his consent to search the Tupperware container and failed to place any limitation on the scope of the search. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When it is determined that the searches were conducted with the defendant's voluntary consent, the defendant's claims of a violation of his right not to incriminate himself pursuant to FSM Const. art. IV, § 7 also fail because a confession's voluntariness is determined by reference to the totality of surrounding circumstances. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

The possibility that Micronesians may be more apt to acquiesce when asked to give their consent by an authority figure may be one of the factors that a court may consider in evaluating

the "totality of the circumstances" to determine whether consent was voluntarily given. Such an assessment must be performed on a case-by-case basis, and the court would be overly presumptive to assume that all Micronesians would respond to police questioning in the same manner. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

While the court may be sensitive to the possibility of a Micronesian suspect's simple submission to what is considered the authority or the power of the state to search, a tendency by individuals to accede to the demands of authority figures is not unique to Micronesia. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

A consent search simply does not rise to the level of a custodial interrogation or trial, both situations in which a defendant must be specifically informed of his rights. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

A warning is required when a custodial interrogation takes place and a suspect has been deprived of his freedom in a significant way. This differs from the situation where there was some evidence of illegal activity prior to the search, but it did not meet the probable cause standard necessary to arrest or search. In this type of situation, a search authorized by valid consent may be the only method by which evidence may be obtained. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

If the court were to impose an explicit proof of knowledge requirement in determining the reasonableness of consent searches, it would seriously limit police officers' ability to use consent searches at all, as it would be very difficult for the prosecution to ever show that a suspect affirmatively knew of his right to refuse consent. Under such a standard, defendants could simply fail to admit that they knew of their right to refuse consent, creating an unrealistically high burden for prosecutors seeking to introduce evidence obtained as a result of a consent search. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

Explicit knowledge of the right to refuse consent is not mandatory for a valid consent search to occur. FSM v. Phillip, 17 FSM R. 595, 601 (Pon. 2011).

When, based on the totality of the circumstances, the court finds that the defendant voluntarily consented to the search of his backpack, his motion to suppress evidence will be denied. FSM v. Phillip, 17 FSM R. 595, 601 (Pon. 2011).

– Exclusionary Rule

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM R. 79, 92 (Pon. 1982).

This court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect the right to be free from unreasonable search and seizure. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure, is tainted by illegality, and must be excluded. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Generally, whatever evidence is obtained pursuant to an unlawful arrest may be suppressed. One exception to the general rule is when the government obtains the evidence based on an independent source. If knowledge of such facts is gained from an independent source they may be proved like any others. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Exclusion of evidence obtained as a result of a violation of one's constitutional rights has no applicability to evidence obtained by the prosecution from sources factually unrelated to violations of a defendant's rights. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Society's interest in deterring unlawful police conduct and the public interest in having factfinders receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position than they would have been if no police error or misconduct had occurred. When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

When the police received information that the defendant was carrying a handgun from a known informant with whom they knew the defendant had lived for three years while he was in Nema, and when their conduct of the ensuing search was based on that and not on the prior unlawful arrest, that independent tip makes the search reasonable because the information given the police while the defendant was detained was a source independent from the unlawful arrest. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule and that damage remedies are available for violations of constitutional rights stemming from either an unlawful search or arrest. Both these remedies are present in the FSM. FSM v. Wainit, 11 FSM R. 424, 435 (Chk. 2003).

The remedy for a victim of an illegal search is not the self-help of resistance. Resistance to such authority to search and seize by self-help is not recognized in courts of law. Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule. And in any event damage remedies are available in the courts for violations of constitutional rights stemming from either an unlawful search or arrest. These remedies are present in the FSM. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

The exclusionary rule is well established in the FSM. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

The court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect right to be free from unreasonable search and seizure. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure and is tainted by illegality, and must be excluded. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

When admissions have been obtained in the course of questioning that violated 12

F.S.M.C. 218, statutory policy calls for a presumption that subsequent admissions were obtained as a result of the violation. Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. FSM v. Benjamin, 19 FSM R. 342, 348-49 (Pon. 2014).

When some evidence was obtained by means sufficiently distinguishable to be purged of the primary taint, it will not be suppressed, and therefore the court will not quash the information. FSM v. Benjamin, 19 FSM R. 342, 350 (Pon. 2014).

The usual remedy for a person's failure to be informed of his rights is the suppression of any evidence against him that resulted from that failure. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

– Incident to an Arrest

A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Yinmed v. Yap, 8 FSM R. 95, 100 (Yap S. Ct. App. 1997).

A search incident to valid arrest must be confined to the person and the area from within which he or she might have reached weapons or destructible evidence and be done on the spot or later at the place of detention. Yinmed v. Yap, 8 FSM R. 95, 100 (Yap S. Ct. App. 1997).

When the police, after arresting the accused and while he was being escorted away, returned to seize items that had been lying next to him when arrested did make the seizure, they did no more than they were entitled to do incident to the usual custodial arrest, and the accused was no more imposed upon than he would have been had the seizure taken place simultaneously with his arrest. The seizure was thus valid under the search incident to lawful arrest exception to the warrant rule. Yinmed v. Yap, 8 FSM R. 95, 100-01 (Yap S. Ct. App. 1997).

A search that was not done at the place of the arrest and at the time of the arrest or immediately thereafter is not a valid search incident to a lawful arrest. FSM v. Aki, 9 FSM R. 345, 348 (Chk. 2000).

The most basic principle underlying a warrantless search incident to a lawful arrest is that the arrest itself must be justified, and when the arrest is invalid, the search is invalid. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496-97 (Pon. 2005).

When the police had probable cause to arrest the defendant because he was intoxicated and in a public place, a bag seized from the defendant was therefore seized pursuant to a lawful arrest. The search of the bag was thus not unreasonable because a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Searches incidental to a lawful arrest, and inventory searches, are exceptions to the Constitution's warrant requirement, and, as such, do not violate the Constitution's prohibition of unreasonable searches. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Generally, a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. With respect to dwellings, an officer may conduct a warrantless search with validly obtained consent and, if evidence is discovered, the officer may seize it pursuant to the plain view doctrine. Chuuk v. Sipenuk, 15 FSM R. 262, 265-66 n.3 (Chk. S. Ct. Tr. 2007).

It is not unreasonable for the police, as part of the routine incident to an arrest, to search any container or article in the arrestee's possession or in his vicinity. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Tosy, 15 FSM R. 463, 467 (Chk. 2008).

Where a taxi driver was arrested and taken into custody and the zippered waist bag that he had was searched incident to his arrest because the bag was in close proximity to him when he was arrested and the officers discovered the bag and searched it, the search of that bag was not only reasonable, but lawful and the accused's assertion that the police lacked probable cause to search the bag is simply immaterial to the reason that such a search was even conducted and the accused's motion to suppress the weapon and ammunition that were found in the bag will be denied. FSM v. Tosy, 15 FSM R. 463, 467 (Chk. 2008).

Persons are constitutionally protected from unreasonable searches and seizures. But when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search that automobile's passenger compartment. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment for if the passenger compartment is within reach of the arrestee, so also will the containers in it be within his reach. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest and this right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

A search incident to valid arrest is confined to the person and the area from within which he or she might have reached weapons or destructible evidence and may be done on the spot or even later at the place of detention. Such incidental searches include a vehicle's passenger compartment, even after the occupants have been ordered out and are standing nearby. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

When the police had a reasonable belief that there was a firearm in the vehicle, a search of the vehicle incident to an arrest might also be viewed as reasonable if it were done for the purpose of protecting the general public from a firearm that was believed to be in the vehicle and that might fall into the wrong hands. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

– Inventory Search

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

A standardized procedure for inventorying an arrestee's possessions at the stationhouse is an entirely reasonable administrative procedure that not only deters an arrestee's false claims of missing or damaged property but also inhibits theft or careless handling of the arrestee's property and protects people from any dangerous instrumentalities that may be found. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

An inventory search is reasonable when police follow standardized procedures and are not acting in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

Standardized or established routine must govern inventory searches because an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

Because the police also looked for contraband while doing an inventory that does not mean that the search was done in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

To be valid, an inventory search must be governed by a standardized or established routine and not be a general rummaging to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The purpose of a standardized inventory procedure is to deter an arrestee's false claims of missing or damaged property, to inhibit theft or careless handling of an arrestee's property, and to protect against any dangerous instrumentalities that may be found. FSM v. Aki, 9 FSM R. 345, 348-49 (Chk. 2000).

When the police did not follow their own standard procedure for an inventory search of a vehicle and no inventory of the sedan's contents was made, and no listing of the sedan's description and owner made, it can only be described as a warrantless search for evidence, and

as such was an illegal search. FSM v. Aki, 9 FSM R. 345, 349 (Chk. 2000).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Searches incidental to a lawful arrest, and inventory searches, are exceptions to the Constitution's warrant requirement, and, as such, do not violate the Constitution's prohibition of unreasonable searches. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

– Investigatory Stop

Under Kosrae statute, following commission of an offense a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. This establishes the standard for the arrest of a person, but it does not establish the standard for the police to conduct an investigatory stop of a vehicle. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable suspicion is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Generally, an anonymous tip is not sufficient justification for a stop by the police. Police need sufficient reasonable articulated suspicion. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Once the police have reasonable suspicion that the defendant has committed a criminal offense, they may conduct an investigatory stop, which is a temporary stop to confirm or dispel the suspicion which initially induced the investigatory stop. Investigatory stops are based upon less than probable cause and are temporary in nature. The information gained at the investigatory stop is then used to confirm or dispel the initial suspicion, and then either arrest or release the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

Warrantless arrests are, under certain situations, lawful and authorized by statute. Arrest by police without a warrant is authorized when a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, or

a policeman, even when it is not certain that a criminal offense has been committed, may detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

When the police knew that a crime had been committed and had either reasonable grounds to believe that the vehicle's occupants had committed the offense or reasonable suspicion that one or more of the vehicle's occupants had committed a felony and when the police knew that someone in that vehicle had fired a handgun from that vehicle, a search of the vehicle's passenger compartment is reasonable under such circumstances. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

Reasonable suspicion, not probable cause, is all that is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Investigatory stops are based upon less than probable cause and are temporary in nature, and the information gained at the investigatory stop is used to confirm or dispel the initial suspicion, and then either arrest or release the person stopped. Berman v. Pohnpei, 17 FSM R. 360, 369-70 (App. 2011).

A law enforcement officer may perform an investigatory stop, also known as a field interrogation, if he has reasonable suspicion, based on specific facts, that the suspect has committed or is about to commit a crime. The officers may perform an investigatory stop when swift action is necessary based upon the law enforcement officer's observations. FSM v. Phillip, 17 FSM R. 413, 419 (Pon. 2011).

The question of whether an investigatory stop is a reasonable exception to the prohibition in FSM Const. art. IV, § 5 against unreasonable seizures is whether the facts available to the officers at the moment of the seizure would lead a person of reasonable caution to believe that the action was appropriate. When such situations arise, a warrant is not necessary because there is an element of urgency or speed requiring action while the suspect is present and engaged in suspicious activity. FSM v. Phillip, 17 FSM R. 413, 419 (Pon. 2011).

When officers received a tip that someone was planning to transport marijuana to Pohnpei's outer islands in late December, 2009 and the informant provided the description of a vehicle and a vehicle check revealed that the defendant owned it; when, on arrival at the dock, investigating officers observed the defendant board the *Voyager* with a backpack and disembark a short time later without the backpack; when, at first the defendant denied having a backpack, but after being told that he had been seen carrying a backpack on board, he admitted to having a backpack and told officers that he had given the backpack to another person; and when a check of that person revealed that he had never encountered the defendant on the *Voyager*, these specific facts and the rational inferences drawn from them justified the officers' reasonable suspicion that the defendant had deposited a backpack possibly containing contraband on board the *Voyager*. Under these circumstances, with the *Voyager* scheduled to disembark,

there was an element of urgency or speed requiring the officers' immediate action. The officers were entitled to perform an investigatory stop of the defendant to determine whether he had or was about to commit a crime because the officers had reasonable suspicion, based on specific facts, that the defendant had committed or was about to commit a crime. FSM v. Phillip, 17 FSM R. 413, 419-20 (Pon. 2011).

When the officers' investigatory stop of the defendant and their questioning him about suspicious circumstances did not constitute an arrest, the officers were not required to advise the defendant of his right to remain silent when they first approached him on the dock. FSM v. Phillip, 17 FSM R. 413, 420 (Pon. 2011).

A law enforcement officer may perform an investigatory stop, also known as a field interrogation, if he has reasonable suspicion that the suspect has committed or is about to commit a crime. The reasonable suspicion standard requires police officers to identify "specific and articulable facts" justifying the stop, rather than a mere hunch. Reasonable suspicion must exist before the investigatory stop occurs for the stop to be valid. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

An anonymous tip received regarding the defendant's possible actions to transport contraband to Pingelap, the defendant's appearance at the dock with a backpack, and the defendant's disembarkation from the vessel without the backpack, were sufficient specific and articulable facts that supported the officers' reasonable suspicion that a crime had occurred or was about to occur. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

A valid investigatory stop requires only reasonable suspicion, based on specific and articulable facts, that the suspect has committed or is about to commit a crime. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

When the specific facts available to the police officers, namely, the informant's tip; that this tip was corroborated when the defendant, who was known to the officers, arrived at the dock carrying a backpack and boarded the vessel; and that some of the officers witnessed the defendant disembark from the ship without his backpack, were more than sufficient to establish reasonable suspicion, the officers were entitled to perform an investigatory stop of the defendant to determine whether he had or was about to commit a crime. FSM v. Phillip, 17 FSM R. 595, 598-99 (Pon. 2011).

The police did not go beyond the scope of an investigatory stop and compel incriminating testimonial evidence because the defendant voluntarily consented to a police request that he assist them in locating a backpack when the officers that approached the defendant were dressed in street clothes, not in uniform; when the police officers were unarmed; when the questioning occurred in a public location; when there was no evidence of any coercion or forceful language being used; and when some of the police officers and the defendant had met each other before and were acquainted with each other. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

When the officers had reasonable suspicion, based on specific and articulable facts, to perform an investigatory stop of the defendant after he disembarked from the *Voyager* on December 27, 2009, and when the defendant was not compelled to make an explicit or implicit disclosure of incriminating testimonial information since he volunteered to help the officers locate his backpack, he was not at that time, entitled to a privilege against self-incrimination

under FSM Const. art. IV, § 7. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

– Plain View

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. FSM v. Mark, 1 FSM R. 284, 294 (Pon. 1983).

An officer who, while standing on a road, sees a marijuana plant in plain view on top of a nearby house has not thereby engaged in an unlawful search. Kosrae v. Paulino, 3 FSM R. 273, 276 (Kos. S. Ct. Tr. 1988).

Even on public premises a person may retain an expectation of privacy, but where a person residing on public land makes no effort to preserve the privacy of marijuana plants and seedings, entry of police on the premises and seizure of contraband that is plainly visible from outside the residence is not an unconstitutional search and seizure. FSM v. Rodriquez, 3 FSM R. 368, 370 (Pon. 1988).

The "open fields" exception requires the evidence to be in plain view from a public place. But when the police viewed the open can of beer in the defendant's hand solely as the result of an illegal roadblock at which the car was stopped and would not have viewed the can of beer if the car had not been stopped at the roadblock, the can of beer was not in plain view from a public place and the "open fields" exception is not applicable. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

Under the plain view exception to the warrant requirement, if a police officer has a right to be in a specific place, and has a plain view of items subject to seizure, then he may seize those objects and they may be introduced into evidence in a subsequent criminal proceeding, but when the officer could not have seen the gun from his position on the porch and only obtained the rifle only after he had entered the house and conducted a search lasting 5 to 6 minutes, the search violated the right to be free from unreasonable searches and seizures. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The plain view doctrine has been recognized as an exception to the search warrant requirement, and the application of the plain view doctrine and the legality of the search must be analyzed upon the information known to the police immediately before the search began. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The analysis of warrantless seizure and application of the plain view doctrine proceeds with three requirements: First, the police officer must lawfully make the initial intrusion or lawfully be in a position to view a particular area. Second, the officer must discover the incriminating evidence inadvertently (not know in advance the location of certain evidence). Third, it must be immediately apparent to the police that the items they observe are either evidence of a crime or contraband. Kosrae v. Noda, 14 FSM R. 37, 40-41 (Kos. S. Ct. Tr. 2006).

When a police officer conducted a routine investigation of a vehicle involved in an accident and, since the vehicle had been abandoned and the driver had voluntarily left the scene of the accident with a bystander, was looking for the registration card to determine the vehicle's ownership (a proper action within the state's governmental authority and police power); when the officer discovered the marijuana roaches in the ashtray inadvertently while looking for the vehicle's registration card; and when the officer, upon viewing the marijuana cigarette roaches in the ashtray, immediately recognized those items as contraband, the requirements for the application of the plain view doctrine have been satisfied and the warrantless search conducted of the defendant's vehicle was within the state's governmental authority and police power and was not unreasonable and the marijuana evidence will not be suppressed. Kosrae v. Noda, 14 FSM R. 37, 41-42 (Kos. S. Ct. Tr. 2006).

Generally, a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. With respect to dwellings, an officer may conduct a warrantless search with validly obtained consent and, if evidence is discovered, the officer may seize it pursuant to the plain view doctrine. Chuuk v. Sipenuk, 15 FSM R. 262, 265-66 n.3 (Chk. S. Ct. Tr. 2007).

A warrant is not necessary to authorize seizure and the seizure is therefore reasonable when the contraband or the instrument of a crime is in plain view of a police officer who has a right to be in the position to have that view so that when the handgun, and the bag the officer saw the accused put the gun into, were in the officers' plain view because they were responding to an emergency call and were thus in a place where they had a right to be the motion to suppress the seizure of the handgun will be denied. FSM v. Sato, 16 FSM R. 26, 29-30 (Chk. 2008).

Despite the fact that the defendant and the backpack was in a public place, it is clear that the defendant had a reasonable expectation of privacy in the backpack's contents. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

There is no protected privacy interest in items exposed to public view. It is not a "search" if police observe what may be seen by any member of the general public. Thus, when a backpack was in a public location, in public view, the police were entitled to locate the backpack on the *Voyager* even without the defendant's consent. FSM v. Phillip, 17 FSM R. 413, 421 n.1 (Pon. 2011).

– Probable Cause

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM R. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or

seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

In probable cause determinations the court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Probable cause is not proof of guilt, but shows that a reasonable ground for suspicion, sufficiently strong to warrant a cautious man to believe that the accused is guilty of the offense, exists. Kosrae v. Paulino, 3 FSM R. 273, 276 (Kos. S. Ct. Tr. 1988).

Because the purpose of article IV, section 5 of the Constitution is to protect the privacy rights of individuals against unreasonable and unauthorized searches and seizures by government officials it has been interpreted to require that an individual suspected of a crime be released from detention unless the government can establish "probable cause" to hold that individual. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588 (Pon. 1994).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588-89 (Pon. 1994).

Often the determination of probable cause is made by a competent judicial officer upon the

issuance of an arrest warrant, but where an arrest is not made pursuant to a warrant the arrested is entitled to a judicial determination as to whether there is probable cause to detain the accused. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589 (Pon. 1994).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence and the requirement of proof beyond a reasonable doubt do not apply. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589 (Pon. 1994).

An individual whose property has been seized pursuant to a civil forfeiture proceeding is entitled to a post-seizure hearing in order to determine whether there is probable cause to seize and detain that property. The probable cause standard in a civil forfeiture case is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation has occurred and that the property was used in that violation. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589-90 (Pon. 1994).

The government has probable cause to detain a fishing vessel for illegal fishing when the evidence and information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from the actual name of the vessel. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 590-91 (Pon. 1994).

In a post-seizure probable cause hearing in a civil forfeiture case the standard for finding that the FSM has probable cause to seize a fishing vessel is defined by reference to 24 F.S.M.C. 513(2). FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 302 n.1 (Kos. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 305 (Kos. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A search warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

To determine probable cause, the question is whether a substantial probability exists in the mind of a cautious person which leads him or her to conclude that the items to be seized that are the evidence of a crime are in a particular place at the time the warrant is issued – probable cause upon which a valid search warrant must be based must exist at the time at which the

warrant is issued, not at some earlier time. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

Although crucial, the time lapse is not considered in isolation from other factors when determining probable cause. The passage of time is not necessarily a controlling factor in determining the existence of probable cause because a court should also evaluate the nature of the criminal activity and the kind of property for which authorization is sought. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

First-hand information from a reliable informant that firearms were left in a particular building and other firearms were packed and shipped to that address months earlier will establish probable cause of illegal possession of firearms because firearms are something that do not deteriorate or pass away just through the passage of time and are usually left in just one position where kept and rarely, if ever, used, and delivery and then continued possession after receipt as a continuing matter may be inferred. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The police had probable cause to stop a sedan and detain its driver when they found it headed northbound a short time after it almost collided with a police car while it was speeding southbound and passing another southbound vehicle because the sedan had tinted windows and the police had no reason to believe that the sedan had switched drivers in the short time since they had last seen it. FSM v. Aki, 9 FSM R. 345, 348 (Chk. 2000).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Probable cause is a higher standard than reasonable suspicion. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

A probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The statute of limitations is no part of any definition of probable cause. Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious

person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. That the violation of law occurred within the statute of limitations is not an element that must be shown for probable cause to exist. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

Before a search or seizure may occur, there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

Probable cause has not been provided that a crime has been committed and an application for a search warrant will be denied when the criminal law cited requires a showing that an individual threaten harm to a public official "with purpose to influence" a public official in a decision making capacity and the e-mails' language is ambiguous, and does not necessarily threaten harm to any public official and do not reference any decision, opinion, recommendation, vote, or other exercise of discretion by any FSM Immigration personnel and even if the court were to read the e-mails as serious threats to do harm, there is no connection between the threatened harm and any action by Immigration officials that could possibly be influenced. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable grounds or probable cause exist when factors and circumstance within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution to believe an offense has been committed. For the offense of driving under the influence, these circumstances include odor of alcohol, results of the field sobriety tests, appearance and mannerism of intoxication, slurring of speech, and unsteady movement. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

An extradition hearing's purpose is not to hold a trial on the merits to determine guilt or innocence, but to determine whether probable cause exists to believe that the person whose surrender is sought has committed the crime for which extradition is requested. The probable cause standard applicable in extradition proceedings is described as sufficient evidence to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

An illegal search cannot justify a later arrest, and an arrest cannot be justified by a subsequent search. A search's legality must be tested on the basis of the information known to the police officer immediately before the search began. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 497 (Pon. 2005).

In accordance with the Chuuk Constitution provision against unreasonable searches, seizures, and invasions of privacy, no warrant may be issued but upon probable cause,

supported by affidavit, specifically describing the place to be searched and the persons or things to be seized. An individual suspected of a crime must be released from detention unless the government can establish probable cause to hold that individual. Chuuk v. Chosa, 16 FSM R. 95, 97 (Chk. S. Ct. Tr. 2008).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. As a general rule, any evidence may be considered in determining whether reasonable suspicion or probable cause exists, and the finding of probable cause may be based upon hearsay evidence in whole or in part. Chuuk v. Chosa, 16 FSM R. 95, 97-98 (Chk. S. Ct. Tr. 2008).

A probable cause determination must be made by a deliberate, impartial judicial officer. Often the determination of probable cause is made by a judicial officer upon the issuance of an arrest warrant, but when an arrest is not made pursuant to a warrant, an arrested person is entitled to a judicial determination as to whether there is probable cause to detain him. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When informants are used to establish probable cause, the investigating officers should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. When the court makes its determination as to whether probable cause was proven, it must regard the evidence from the vantage point of law enforcement officers acting on the scene, but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When the affiant's belief that probable cause existed was based solely on affiant's review of a police report, which presumably was prepared by an officer who investigated the crime scene; when the affiant does not state whether the affiant spoke with the reporting officer, or even identify the reporting officer; when there is no explanation of how the information contained in the police report was obtained; when there is no evidence that the affiant or the unknown reporting officer interviewed witnesses or investigated the incident and there is no way to determine the extent to which the report itself was based on hearsay or any assurance that it was based on the investigating officer's reasonable belief rather than on pure speculation, then the "affidavit of probable cause" is deficient because the affidavit suffers from multiple layers of hearsay, and multiple levels of hearsay become less reliable as the number of levels of hearsay increase and because the affidavit fails to adequately identify the information's source or sources and may be based on unattributed hearsay statements of one or more declarants. As

the number of included hearsay statements increases, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Chosa, 16 FSM R. 95, 98-99 (Chk. S. Ct. Tr. 2008).

A counsel's affidavit used to establish probable cause places counsel in the position of being called as a witness in the case and detracts from the evidence's reliability because it merely adds another layer of hearsay. In that instance, counsel would be in apparent violation of Model Rule of Professional Conduct 3.7 (1983), which, subject to limited exceptions, prohibits counsel from being an advocate at a trial in which counsel is likely to be called as a witness. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Although, there may be cases when an affidavit containing multiple layers of hearsay is deemed sufficiently reliable to prove probable cause, when the affidavit fails even a minimal level of reliability that might be justified by exigent circumstances, which, in any case, were not present, the affidavit filed with the information was not reliable enough to prove probable cause and the defendant's motion to suppress the affidavit of probable cause and for dismissal was therefore granted, and the case was dismissed. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

The police have a right to conduct a routine traffic stop, and when they, in order to investigate and confirm or refute their suspicions, stopped a car in which there was a passenger who they suspected had abandoned his Honda after driving it off the road while intoxicated, they did not conduct any unlawful search or seizure. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Typically, before an arrest can be made, a warrant must be issued for that arrest. A warrant requires a showing of probable cause, and probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Pohnpei state law authorizes policemen to make an arrest without a warrant when 1) a breach of the peace or other criminal offense has been committed, and the offender is shall endeavoring to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present; 2) anyone is in the act of committing a criminal offense; 3) a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it; and 4) even in cases where it is not certain that a criminal offense has been committed, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A person arrested for obstructing justice because she refused to give the police officers access to her car and interfered with their peaceful attempts to talk with her husband, whom she locked inside the car, is arrested for an offense committed in the police officers' presence, and, that being the case, a warrant did not need to be issued prior to the arrest. Since the officers correctly determined that they had probable cause to arrest without a warrant because her conduct fell within the Pohnpei state law definition of obstruction of justice, they did not conduct an unlawful or false arrest of her. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A traffic stop, no matter how brief, is a seizure. But this seizure is not a warrantless arrest such that probable cause is needed and the person stopped must immediately be advised of his or her rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

When the police had information from an off-duty police officer that gave them reason to suspect that a person had been involved in a car accident and that he was intoxicated, these facts equate to reasonable suspicion to stop him and investigate. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Since the police may arrest without a warrant persons who are in the process of committing an offense in their presence, when the trial court found as fact that a person had, in the presence of the police, been argumentative; had prevented them from gaining access to her husband, who they had reasonable suspicion to stop and to whom they wanted to talk about a car abandonment; and that when a sergeant arrested her it was for obstructing justice and for pushing him in the chest and when these facts remain the facts on appeal, the facts, viewed from the law enforcement officers' vantage point, would constitute probable cause for an arrest on an obstructing justice charge. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

That the police had probable cause for an arrest on an obstructing justice charge does not mean that the arrestee was guilty beyond a reasonable doubt of that charge or that there was sufficient evidence to convict her on that charge; it only means that the police had enough to arrest her. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

A finding of probable cause may be based upon hearsay since the general rule is that virtually any evidence may be considered. A police officer may consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion and some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be based entirely upon hearsay. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has

occurred and that the accused committed that violation. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When the affidavit in support of the information is simply too vague, it does not contain any evidence or factual information that might lead a cautious person to believe it likely that defendant committed a crime prior to being arrested and searched. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When the nature of the complaint that law enforcement received and responded to is unspecified either by hearsay or any other kind of evidence; when the accused is said to have been arrested and brought to DPS for processing as a result of police action triggered by the complaint but that arrest's details and circumstances are also unsubstantiated; and when the affidavit reads as a cursory afterthought to the arrest, incarceration, search, and ultimate seizure perpetrated by law enforcement on the accused, it could not, in and of itself, have supported a finding of probable cause prior to the arrest. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When a factually-sufficient information is unsupported by an affidavit showing probable cause but at the motion hearing the State, although neither was the affiant, elicited testimony from an officer involved in the actual arrest and another involved in defendant's search and booking and the arresting officer provided sufficient detail to remedy the affidavit's defects; when the accused was given the opportunity, and in fact did, cross-examine both witnesses; when the court finds their testimony credible and is satisfied that ample probable cause existed for accused's arrest; and when there is nothing before the court to indicate that the accused would in any way be prejudiced if the sworn testimony elicited at the hearing were admitted for the purposes of demonstrating that law enforcement had probable cause to arrest and subsequently search the accused incident to his arrest, at the time he was arrested, the information's charging portion remains unaffected and the accused's motion to suppress will be denied. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

A probable cause finding may be based upon hearsay evidence in whole or in part. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

Because the FSM Supreme Court has previously looked to the principles underlying the U.S. Constitution's Fourth Amendment when analyzing the requirements necessary to establish consent sufficient to justify a warrantless search in the FSM, the court may engage in that analysis again. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

When the three officers' affidavits are sufficient to establish facts which, if proven, may support the defendant's conviction on the charges brought; when the connection between a customs officer and an informant, to the extent that it exists, is not necessary to show probable cause to arrest the defendant; and when the affidavits support the discovery of significant quantities of a leafy substance resembling marijuana in the defendant's backpack, as well as further tests of that substance which revealed that it was marijuana, these affidavits provide probable cause to believe that a crime was committed, and the defendant's motion to dismiss the information will be denied. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 2011).

If it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. The probable cause finding may be based upon hearsay evidence in whole or in

part. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. An informer may provide the information. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay since the general rule is that virtually any evidence may be considered. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

As the levels of hearsay included in the affidavit increase, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

When the court makes its determination as to whether probable cause was proven, it must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Chuuk v. Hauk, 17 FSM R. 508, 512-13 (Chk. S. Ct. Tr. 2011).

When the affidavit identifies its author as a Chuuk State Public Safety Department police detective and indicates that the detective was assigned to investigate the offenses alleged in the information; when the affidavit does not identify informants but describes facts uncovered during the course of the investigation; and when the defendant admits that the affiant formed his conclusions based upon the alleged victim's representations, the affiant's failure to name sources of information does not render the affidavit defective, in part because the defendant admits that the affiant gathered information directly from the victim. The affidavit does not suffer from multiple layers of hearsay because the affiant identifies himself and attests to personally investigating the criminal violations alleged. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

It is difficult to imagine how the vast majority of criminal prosecutions might proceed without using hearsay: it is the exception rather than the norm that court testimony underpins probable cause determinations. Any statements made to the affiant by the alleged victim are by definition hearsay and hearsay may, in whole or in part, form the basis of probable cause determinations, as may virtually any kind of evidence. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

Generally speaking, a prudent and thorough investigation likely would involve questioning the defendant before a probable cause determination is made, but the court is not in the business of investigating criminal allegations; law enforcement officials are and whether and to what extent the officer determined that such questioning was unnecessary and whether the omission somehow weakens the State's case is a factual issue to be determined at trial. Nothing in FSM or Chuuk state law provides that every investigating officer in every criminal case must question all or any criminal suspects before making a probable cause determination. Chuuk v. Hauk, 17 FSM R. 508, 513-14 (Chk. S. Ct. Tr. 2011).

Although there are civil remedies for the wrongs alleged, the possible existence of civil

remedies in no way negates the fact that the legislature has criminalized the behavior alleged. The court's task in a probable cause determination is to determine whether the criminal allegations have merit, not to contemplate the propriety of the legal venue. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When the court finds nothing to indicate that information obtained from the alleged victim is unreliable; when it does not seem reasonable or realistic to expect an alleged victim to remain neutral and unbiased regarding his claims about being victimized; and when the defendant admits that there was a financial arrangement of some sort between himself and the complainant and that the agreement itself is part of the nexus of facts leading up to this prosecution, the defendant has failed to demonstrate that from the investigating officer's perspective, information obtained during the course of the investigation is insufficient to justify a probable cause finding. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

The time to raise issues regarding probable cause is immediately after arrest, preferably at the initial appearance, arraignment, or, upon motion, at a probable cause hearing. It is not approximately one month before trial is scheduled to begin. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When the information alleges that the accused presented checks to merchants knowing that those checks were false documents, those factual allegations, supported by affidavit, establish probable cause that the accused violated 11 F.S.M.C. 529(1)(b). FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Redaction is not required for a defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Sorim, 17 FSM R. 515, 524 n.2 (Chk. 2011).

An arrest warrant or summons may issue if it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Mitipok, 17 FSM R. 552, 553 (Chk. S. Ct. Tr. 2011).

Since the general rule is that virtually any evidence may be considered, a police officer may consider any evidence in determining whether reasonable suspicion or probable cause exists and the evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Chuuk v. Mitipok, 17 FSM R. 552, 553-54 (Chk. S. Ct. Tr. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

When, although the affiant does not identify sources of information in his affidavit, the court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred; when if the affiant obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination; when it appears from the affidavit that the officer was able to observe damage to a vehicle that the defendant caused, the court will find that probable cause existed to support the information's charges and that defendant's motion to dismiss the information is without merit and will be denied. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

The government must make a probable cause showing at a hearing before pretrial restraints on a defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. In re Anzures, 18 FSM R. 316, 320 n.7 (Kos. 2012).

Probable cause is a constitutional requirement for a warrant. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining "probable cause" is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

A finding of probable cause may be based upon hearsay evidence in whole or in part. In re Anzures, 18 FSM R. 316, 324 n.12 (Kos. 2012).

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Probable cause existed when the affidavit of probable cause includes such facts that the court can find that the detective had sufficient information to believe that it was more likely than not a violation of the law had occurred involving the defendant. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Article IV, § V protects individuals against illegal search and seizures, which can only be done based on probable cause. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial judgment of a judicial officer. FSM v. Benjamin, 19 FSM R. 342, 346-47 (Pon. 2014).

The protection in article IV, § 5 of the FSM Constitution against unreasonable search and seizure is based on a comparable provision in the fourth amendment of the U.S. Constitution. FSM v. Benjamin, 19 FSM R. 342, 347 n.4 (Pon. 2014).

When the defendant was found in the area after hours and his answers to the officer's questions were inconsistent, that and the surrounding circumstances rise to the level of reasonable suspicion, but not the higher standard of probable cause, which is needed for a lawful arrest. "Reasonable suspicion" is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity. FSM v. Benjamin, 19 FSM R. 342, 347 & n.5 (Pon. 2014).

In adopting the Declaration of Rights as part of the FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause. Probable cause has been defined as a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

In probable cause determinations, the court must regard evidence from vantage point of law enforcement officers acting on scene but must make its own independent determination as to whether, considering all facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Thus, an officer's prior training and experience is a valid source of consideration when making a probable cause determination. FSM v. Ezra, 19 FSM R. 497, 515 n.13 (Pon. 2014).

The finding of probable cause may be based upon hearsay evidence in whole or in part. As a general rule, a police officer may consider virtually any evidence in determining whether reasonable suspicion or probable cause exists. FSM v. Ezra, 19 FSM R. 497, 515 (Pon. 2014).

Probable cause existed when the police knew a crime had occurred because they received a call reporting a break-in at the Chinese Embassy; when there was reason to believe that a crime had occurred inside the Chinese Embassy compound; when based partly on the victim's statement and the Chinese Embassy's video surveillance, the police brought in two suspects whose statements implicated another; and when even though some of the evidence used by the police in determining that the other was a suspect to that crime was hearsay, a cautious person, based on the evidence the police already had in their possession, would have had reason to bring him in for questioning or to make an arrest without further questioning. The police have the discretion to formally arrest someone or to gather more information as they deem necessary. FSM v. Ezra, 19 FSM R. 497, 516 (Pon. 2014).

Probable cause is a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely

than not that a violation has occurred. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

Under the collective knowledge doctrine is a specific application called the "Fellow-Officer Rule," which expresses the principle that an investigative stop or an arrest is valid even if the law-enforcement officer lacks personal knowledge to establish reasonable suspicion or probable cause as long as the officer is acting on the knowledge of another officer and the collective knowledge of the law-enforcement office. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence do not apply. Thus, the finding of probable cause may be based upon hearsay evidence in whole or in part. This is not however, an open invitation to completely ignore the FSM Rules of Evidence, and the court must discount evidence that is inherently untrustworthy or suspicious. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

In a criminal case, a prosecutor may not, at a probable cause hearing, rely solely on hearsay testimony when competent evidence is readily available from perceiving witnesses. A probable cause hearing is a matter of limited purpose, and procedural and evidentiary rules are relaxed. But hearsay evidence alone will not suffice when other, more competent testimony is available. Thus, although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause hearing, the court may discount unreliable hearsay. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

Establishing probable cause on the basis of hearsay alone should only be resorted to when the testimony of a perceiving witness is unavailable or when it is demonstrably inconvenient to summon witnesses able to testify to facts from personal knowledge. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Hearsay provided by other law enforcement officers is often reliable without requiring any additional showing. Ultimately, hearsay from the police, or other government agencies involved in law enforcement, should not be treated the same as hearsay from an unknown informant or an anonymous tip. In short, who the informant is affects how the court weighs credibility behind the allegations supporting probable cause. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Even though admiralty and maritime cases arrests are often made without an arrest warrant, the defendant is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused. In this hearing, the government bears the burden of proving it had probable cause to seize the vessel. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

There is a substantial difference between the quantum of proof necessary to constitute sufficient evidence to establish probable cause and that necessary to support a conviction. FSM v. Kimura, 19 FSM R. 630, 636, 638 (Pon. 2015).

When, although no one officer had all of the information, collectively the agency did; when one or more government officers had the actual knowledge of each fact necessary to support the belief; when government officers are entitled to rely on representations from fellow officers if those representations are corroborated upon investigation and do not show the indicia of error; when similarly, the government may rely on hearsay derived from other investigative agencies, specifically NORMA observers; and when, regardless of the number of hearsay layers, these intermediaries should all be presumed reliable, the information and evidence was sufficient to

support probable cause by the government at the time of the arrest. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

Probable cause must be made from a reasonable person's perspective, using the fellow-officer rule, to include all of the information that collectively the government had in its possession at the time of the arrest, and not merely any one particular officer's actual knowledge. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

Hearsay can be used to support a probable cause finding, if it has the indicia of reliability. Assessments on the reliability of hearsay should include a consideration for the integrity, training, and the experience of police officers, or other law enforcement agents, from whom it comes. If, after a reasonable investigation under the circumstances, which includes the knowledge of the source, this hearsay is corroborated, it should be considered by the court and weighed accordingly. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The police had probable cause to arrest a person and that arrest was lawful when they knew that he had someone else's pigs and that he would not release them to their owner. Since his arrest was lawful, the resulting overnight detention was lawful and was not false imprisonment. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

The report of a trained and experienced fisheries observer on the scene and his later deposition testimony is more than sufficient to show probable cause – that it was more likely than not that a violation occurred – when, although the observer never actually saw a crew member throw the trash overboard, the court can infer from the circumstantial evidence that it is more likely than not that that is what occurred. Whether the government will be able to prove that beyond a reasonable doubt, a higher standard, is a matter left for trial. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Police officers had probable cause to arrest a person, whose fingerprints were found at the

crime scene, when he turned over the alleged stolen goods because probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

The police have a reasonable suspicion about someone's involvement in the crime when they have a particularized and objective basis, supported by specific and articulable facts, for suspecting that person of criminal activity. FSM v. Isaac, 21 FSM R. 370, 374 & n.5 (Pon. 2017).

Even if the police officers have probable cause to make an arrest, nothing precludes them from further investigating someone before arresting him because questioning of witnesses and suspects is a necessary tool for the effective enforcement of criminal laws, and without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

Once someone voluntarily led the investigating officers to and surrendered the alleged stolen items, probable cause existed to arrest him and no warrant was necessary. FSM v. Isaac, 21 FSM R. 370, 374 (Pon. 2017).

Redaction is not required for a co-defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Jappan, 22 FSM R. 81, 83 n.1 (Chk. 2018).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

When the FSM has applied for a search warrant after granting a foreign request for mutual assistance, the warrant application must satisfy the court that there is probable cause to believe that a serious offense has been or may have been committed against the laws of the foreign state. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 455 (Pon. 2020).

It is well-established that hearsay may be used to establish probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

For the purpose of establishing probable cause that a serious offense has been or may have been committed against the laws of a foreign state, a statement contained in the foreign request to the effect that a serious offense has been or may have been committed against the laws of a foreign state is prima facie evidence of that fact. The statute does not require that the foreign request's statement be under oath. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

An affidavit supporting probable cause is not deficient when the signature line says "notary public" below it, but the signature is that of an FSM Supreme Court court clerk and her signature is sealed by the court's seal. Nor is the inadvertent omission of the date on the line is provided for entry of the date above the clerk's signature, which the court clerk apparently neglected to fill it in before she signed, fatal to the warrant application or the warrant itself. In re

Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

While a U.S. court should, and probably will at some point, have the final say whether a helicopter's supposedly invalid U.S. registration conferred extraterritorial jurisdiction on the U.S., for the purpose of establishing probable cause that U.S. laws were violated, the helicopter's U.S. registration is sufficient. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 458 (Pon. 2020).

An FSM search warrant application established that there was probable cause to believe that a serious offense had been committed against the laws of a foreign state (the U.S.) when it showed that a U.S. registered helicopter was no longer in a flyable condition – no longer airworthy – because the helicopter had had either an "aircraft accident" as there was substantial damage to it, or because there had been a "serious incident" caused by "ground damage," to the helicopter's tail and U.S. law required that U.S. registered aircraft immediately report such events and the helicopter owner did not. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 460 (Pon. 2020).

If there is information received from a known independent source, that information may be used to establish probable cause even if the same information was also obtained through an illegal search. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

The border search exception to the constitutional search warrant requirement applies equally to persons and goods leaving the country as it does to persons and goods entering the country. A border search, or a search at the functional equivalent of a border, of outgoing passengers or goods requires neither a warrant nor probable cause. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. The search warrant application must particularly identify the specific property to be seized and name or describe the place to be searched. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 (Pon. 2020).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

Chuuk Criminal Procedure Rule 4 only allows an arrest warrant or summons to issue when it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, and a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. It further provides that a probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

When the supporting affidavit fails to allege any involvement by the two co-defendants in a conspiracy with the lead defendant, no probable cause exists to pursue the matter against the co-defendants, and, since no other counts are alleged against them, the two co-defendants will be dismissed. Chuuk v. Hebwer, 22 FSM R. 542, 543 (Chk. S. Ct. Tr. 2020).

FSM law provides that a statement contained in the foreign request to the effect that a

serious offense has been or may have been committed against the foreign state's laws is prima facie evidence of that fact. When the appellant has presented nothing that overcomes that prima facie evidence, the true real party in interest, will, of course, be able to contest whether a serious offense was committed against the laws of a foreign state – the U.S. – in the courts of that foreign state and argue there about whether the evidence seized by the FSM for shipment to Guam is evidence of the commission of that alleged serious offense. In re Wrecked/Damaged Helicopter, 22 FSM R. 580, 585 (Pon. 2020).

– Traffic Stop

Stopping motorists on a public road is reasonable, even if there is no particularized suspicion of crime, but police roadblocks must be designed to advance a specific purpose, such as eradication of drunken driving, and the court must determine whether the roadblock was reasonable, through consideration of several factors: the importance of the state's interest served by the roadblock; the effectiveness of the roadblock in advancing the public interest, and the degree to which the roadblock interferes with the motorist. Kosrae v. Sigrah, 11 FSM R. 249, 254 (Kos. S. Ct. Tr. 2002).

When a roadblock's purpose was to check motorists for valid driver's licenses and vehicle registrations, the roadblock was designed to advance a specific state and public interest of assuring that drivers are properly licensed to drive, and to assure that the vehicle being driven meets minimum safety standards by being registered, and it addressed problems which were associated with the persons stopped. When a roadblock was designed to advance a specific public interest and was effective in advancing that public interest because motorists were detained for a temporary and brief period of time, interfering with them only to a minimal degree, the roadblock was reasonable under the Kosrae Constitution and a warrant was not required to conduct it nor was a warrant required for the police to stop a person at the roadblock. Kosrae v. Sigrah, 11 FSM R. 249, 254 (Kos. S. Ct. Tr. 2002).

When a motorist, detained at routine traffic stop for a temporary and brief period, was not arrested and was not in custody at the time he was questioned regarding his driver's license, the police questioning at the roadblock was routine questioning, conducted by government agents as part of their roadblock procedure and did not require Miranda warnings. Therefore, based upon the totality of the circumstances, that motorist was not compelled into giving incriminating evidence against himself, his right against self-incrimination was not violated by the roadblock, and the evidence thus obtained will not be suppressed. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. Sigrah v. Kosrae, 12 FSM R. 320, 328 (App. 2004).

The standard by which the actions of law enforcement personnel is to be measured in conducting a traffic stop is one of reasonableness. To ensure against the arbitrary invasion of an individual motorist's security and privacy interests, the stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The

stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate, rational program intended to make the state's roads safer, and not as a means of circumventing either the probable cause or reasonable, articulable suspicion, standards that would otherwise apply to the stop of an individual motorist. The manner of stopping must be in a rational, predetermined way. Either all motorists must be stopped, or the stops must occur in a specified incremental manner, such as every second, every fifth, etc., motorist. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. With these safeguards in place, the state's interest in promoting roadway safety more than outweighs the intrusion upon the privacy of and momentary inconvenience to the stopped motorists. Sigrah v. Kosrae, 12 FSM R. 320, 329 (App. 2004).

A checkpoint stop constitutes a mechanism for enforcing applicable laws. The roadblock itself, together with its prior announcement, is a means of causing people to take action to comply with applicable laws. When the stop is conducted in such a way that the rights conferred upon citizens under both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution are afforded adequate protection, the roadblock stop is not an unreasonable seizure. Sigrah v. Kosrae, 12 FSM R. 320, 330 (App. 2004).

It is sufficiently plain that automobiles by their intrinsic nature implicate safety concerns. Thus it does not take a statistical analysis to make the point that they are powerful mechanical devices that must be operated in a responsible manner, and that the operation of an automobile that is not roadworthy creates a hazard for other motorists and pedestrians, and a statistical analysis, however useful it might prove, is not a critical predicate to a finding that Kosrae's program of roadway safety roadblocks is constitutional. Sigrah v. Kosrae, 12 FSM R. 320, 330 (App. 2004).

A roadblock traffic stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate rational program. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Robert, 13 FSM R. 109, 111 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice, is a means to cause people to take action to comply with applicable laws. Kosrae v. Robert, 13 FSM R. 109, 111 (Kos. S. Ct. Tr. 2005).

The state's radio announcements made from October 11 through 19, 2004, which stated that roadblocks would be implemented "throughout the year" without specifying the dates of the roadblocks, constituted a failure to announce the date or dates of the scheduled roadblocks necessarily and did not provide adequate advance notice to the public thus resulting in discretionary conduct by giving the public safety administrator and the police officers unfettered discretion to determine the dates of the roadblocks. This arbitrary and discretionary exercise of authority is not permissible. The advance notice and the roadblock held on October 22, 2004 did not provide the necessary constitutional protections and therefore all evidence obtained by the state against the defendant as a result of the roadblock is suppressed and not admissible at

trial. Kosrae v. Robert, 13 FSM R. 109, 112 (Kos. S. Ct. Tr. 2005).

A roadblock stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Sikain, 13 FSM R. 174, 174 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice is a means to cause people to take action to comply with applicable laws. Kosrae v. Sikain, 13 FSM R. 174, 176 (Kos. S. Ct. Tr. 2005).

There are two purposes for requiring advance notice of a roadblock to the public: first, to eliminate arbitrary and discretionary conduct by the officers, and second, to cause people to take action to comply with applicable law. Accordingly, the general public, including passengers, and not just drivers, must be given advance notice. Kosrae v. Sikain, 13 FSM R. 174, 176-77 (Kos. S. Ct. Tr. 2005).

– Return of Seized Property

For a court to order property seized pursuant to a search warrant to be returned, the defendants' burden is to show both that there has been an illegal seizure by the state and that they have a claim of lawful possession to the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

A party who denies ownership of the seized items has no standing to ask for return of the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

For a party to have a valid claim of lawful possession of alcohol seized by the state that party must have paid the possession tax on the seized items. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

Where a defendant's motion is one for the return of seized property and he has failed to meet his burden to show a right to lawful possession, a court need not reach the issue of the illegal seizure and suppression of the evidence. Chuuk v. Mijares, 7 FSM R. 149, 151 (Chk. S. Ct. Tr. 1995).

Because a Rule 41(e) motion for return of seized property is predicated on the seizure's illegality and the showing of a right to possession, return of unregistered firearms is improper because possession of unregistered firearms is unlawful there is thus no right to possession. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

A criminal defendant has the right to move for the return of his property pursuant to Rule 41(e). This offers prompt and adequate relief for his grievance. FSM v. Joseph, 8 FSM R. 469, 470 (Chk. 1998).

The government may retain property seized from a criminal defendant that is not contraband or subject to forfeiture when it intends to offer the items in evidence at trial, and has

a plausible reason for so intending. FSM v. Joseph, 8 FSM R. 469, 470 (Chk. 1998).

The court shall receive evidence on any issue of fact necessary to decide a motion for return of property. FSM v. Aki, 9 FSM R. 345, 349 (Chk. 2000).

A Rule 41(e) motion to return seized property the government claims it never had will be treated as a civil proceeding and may be entertained post-judgment or prejudgment. FSM v. Aki, 9 FSM R. 345, 349-50 (Chk. 2000).

To prevail in his motion the defendant must show that the seizure of the property was illegal, and that he is entitled to lawful possession. The burden of persuasion as to the possession is by a preponderance of the evidence. FSM v. Aki, 9 FSM R. 345, 350 (Chk. 2000).

When the defendant has established by a preponderance of the evidence that the $900 existed, that it was in his briefcase, that it was taken from his briefcase sometime after the police obtained the briefcase and before it was returned, and that he is entitled to lawful possession of the $900.00, a motion to return will be granted and since that money is not in the possession of the government, the defendant shall have judgment against the state for $900.00. FSM v. Aki, 9 FSM R. 345, 350 (Chk. 2000).

– Warrants

Police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Police officers desiring to conduct a search should normally obtain a search warrant. This requirement serves to motivate officers to assess their case and to obtain perspective from the very start. FSM v. George, 1 FSM R. 449, 461-62 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

The Constitution does not protect a person against a "reasonable" search and/or seizure and a search is reasonable where a search warrant has been obtained prior to the search. Kosrae v. Paulino, 3 FSM R. 273, 275 (Kos. S. Ct. Tr. 1988).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM R. 388, 392 (Pon. 1992).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search

or seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

One reason for limiting the government's right to discovery is the many other means the government has for obtaining needed information, such as the search warrant. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Frequently, a search warrant is used at the start of an investigation before charges are brought. But no statute, rule, legal principle, or constitutional provision bars its use at a later stage in the proceeding. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Rule 16(b) only concerns the limited amount of information that the government may, in very limited circumstances, seek by discovery. It is not concerned with what the government may seek to obtain through the use of a search warrant – search warrants are not "discovery." FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Persons executing search warrants are required to promptly file a return with an inventory of the property seized. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

In light of the prompt filing requirement for search warrant inventories, it would be unreasonable to expect the government's inventory to list every document when there are numerous documents. FSM v. Wainit, 11 FSM R. 1, 10-11 (Chk. 2002).

Generally, the failure to promptly file a return with an inventory is a ministerial violation which does not void an otherwise valid search in the absence of a showing of prejudice. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

The ostensible purpose of the inventory requirement is to enable the court to determine, on the face of the warrant, return and inventory, whether the seizure was properly limited to the property identified in the warrant. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

An inventory which lists four file folders and how each folder is labeled, but which does not individually list each document in the 600 pages of documents in the folders, does not show the prejudice that would void an otherwise valid search. If the inventory were found to be inadequate, the most likely remedy would be an order for the government to file a more detailed inventory, not suppression. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

The inadvertent omission of a document from the search warrant inventory would, in itself, not be grounds to suppress that document. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

Rule 41 only requires that a return be made promptly and be accompanied by a written inventory, not that the seized property itself be brought before the court. FSM v. Wainit, 11 FSM R. 1, 12 (Chk. 2002).

A defendant is entitled to a protective order barring the admission of any of the seized items that were outside the search warrant's scope. But when there is no indication that the government intends to offer any of them in evidence, the court will not inspect each item seized and rule on its relevance and whether it was outside the warrant's scope. FSM v. Wainit, 11 FSM R. 1, 12 (Chk. 2002).

As long as probable cause still exists, it is generally accepted that a warrant need only be executed within a reasonable time after its issuance, notwithstanding the presence of "forthwith" language in the warrant. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

To "execute" a search warrant does not mean a fully completed search but to "execute" is in that instance synonymous with to serve a search warrant. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

Even if a search warrant was valid for execution only until 4 p.m., on September 5, 2002, the government having executed, that is served, the search warrant and begun its search before 4 p.m. on September 5th, could have continued its search after 4 p.m. on the 5th until done, even if it ran over onto the 6th. The court does not see much difference between that and securing the site with police present inside to resume physically searching the next morning. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

The historical reason for restricting searches to daytime hours was that invasion of private premises in the small hours of the night and abrupt intrusion upon sleeping residents in the dark was more likely to create terror that precipitated violence. That reason does not apply to a search started in daytime that continues after dark. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

Normally, a search warrant's validity is brought into question by a motion to suppress the evidence seized as a result of the questioned warrant. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government and it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Process "void on its face" usually means process that the court did not have jurisdiction to issue or that was in excess of its jurisdiction. Since the FSM Supreme Court has the jurisdiction

to issue search warrants anywhere in the FSM, and the island of Udot is within the FSM's territorial jurisdiction, and on September 4, 2002, the court had jurisdiction to issue a search warrant that would be valid on September 6, 2002, a search warrant used on Udot on September 6, 2002 was not void on its face. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

A defective search warrant is not a defense to a prosecution for resisting the defective warrant. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

The issue of a search warrant's validity is not a central, or even major issue in a case of resisting a search. It is not an available defense. FSM v. Wainit, 11 FSM R. 424, 437 (Chk. 2003).

A subscriber to an internet service in the FSM may have a reasonable expectation of privacy in the content of e-mails that are stored on the server at the FSM Telecom's offices. Even though e-mails are computer generated, digital images, they are "papers and possessions" that a person reasonably expects will be kept private, and they should not be subject to unchecked governmental intrusion or seizure. Thus, before the court can issue a warrant, it must find that there is evidence sufficiently strong to warrant a cautious person to believe that a crime has been committed. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that society has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. A proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the execution of the warrant at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

In the FSM, a person has no right to resist the execution of a search warrant by police or government agents even if the search warrant is later shown to be invalid. Consequently, a defendant may not assert as a defense that he has no liability and may resist a search warrant if

he believes it is, or if it is, an invalid warrant. The law does not permit this. The search warrant's validity is irrelevant to the case and the court will refuse to hear testimony concerning it. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

A search warrant's invalidity, or a belief it is invalid, is not a defense to charges stemming from resistance to the search warrant's execution. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception which the court has not decided whether it is a viable defense, to resist a court-issued search warrant even if that search warrant turns out to be invalid. FSM v. Wainit, 13 FSM R. 433, 448 (Chk. 2005).

If the building to be searched is closed, the person executing the search warrant shall first demand entrance in a loud voice and state that he desires to execute a search warrant, and if the doors, gates, or other bars to the entrance are not immediately opened, he may force an entrance, by breaking them if necessary. Thus, since the defendant's residence was completely vacant at the time with no one there to grant them entry, the national police had every right to force an entry into the residence. FSM v. Wainit, 14 FSM R. 51, 56-57 (Chk. 2006).

Once a search has been completed, the policeman taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. But, although termed "caretakers" of the property, when the municipal police did not occupy the property and could they provide entry to the residence, they were thus not persons from whom or from whose premises the property was taken and upon whom a copy of the search warrant had to be served, and since the search was not finished on September 5, 2002, whether a copy of the search warrant was left with the municipal police on September 5, 2002 is irrelevant. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

The mere presence of prosecutors during a search is not *per se* improper. A prosecutor may assist in a search to provide legal advice. The reason a prosecutor might not want to participate in investigative matters such as executing a search warrant is that prosecutors only enjoy a limited immunity from civil liability when participating in investigative acts, unlike the absolute immunity from civil liability that prosecutors enjoy for their actions connected with their role in judicial proceedings. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

Although a person has a right to be present while his residence is searched as long as he does not interfere with the search, members of the public and others who entered the residence after the owner had no right to be present during the residence's search. FSM v. Wainit, 14 FSM R. 51, 59 (Chk. 2006).

Although the remedy of self-help or resistance to a search thought to be unlawful is barred,

the court has not decided whether there are some unlawful searches, with or without warrant, the circumstances of which would be so provocative to a reasonable man that the seriousness of the offense of resistance ought to be mitigated as a result of such provocation, and when the defendant had the opportunity to put on such evidence at trial but no such showing (by a preponderance of the evidence), was made, the court did not need to decide whether such an exception could be permitted since the search warrant execution attempt was neither provocative nor was the force used unreasonable. FSM v. Wainit, 14 FSM R. 51, 59-60 (Chk. 2006).

A person whose residence is being searched would, of course, be within his rights to tell the search party that if it insisted upon continuing its search it could do so over his protest, but that, in his view, the search warrant was invalid or expired and he would pursue every available civil remedy and suppression motion available to him so that the search party might want to reconsider whether it wanted to continue. FSM v. Wainit, 14 FSM R. 51, 60 n.8 (Chk. 2006).

A search warrant should be issued in the state where the property sought to be seized was alleged to be located. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

A return of the items seized pursuant to a search warrant must be made even if nothing is found or seized. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When the defendant's arrest was by warrant, the burden of showing its supposed illegality rested with the defendant. When the defendant failed to meet that burden and when the motion's other ground that witnesses were not given required legal warnings is legally unsound, the government's failure to produce evidence at the hearing was not fatal and the motion to suppress is accordingly denied. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

The FSM Supreme Court has the authority to issue a search warrant only upon probable cause supported by affidavit and the search warrant application must particularly identify the specific property or persons to be seized and naming or describing the person or place to be searched. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

The search warrant's particularity requirement prohibits general searches and exploratory rummaging while looking for evidence of a crime. The constitutional protection of the individual against unreasonable searches and the limitations of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

When the search warrant application adequately establishes probable cause as required but is unreasonably broad in its request to search the suspect's dwelling, an adjacent house owned by his mother-in-law but believed to be used as an alternative residence, and his vehicle, the court will grant the warrant to search the suspect's dwelling and his vehicle but deny the request to search the mother-in-law's home. The breadth of the application is not supported by the facts therein because the mere belief that the suspect uses the other home as a residence is not sufficient, nor is it reason to believe that the evidence sought will be found there. The Department of Justice may file another application, or applications, supported by additional evidence, if that location is determined to be necessary to the investigation. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

A warrant cannot stand if it is too broad or vague. The warrant must be particularly specific

in designating the place to be searched or the things to be seized. In re Search of All Electronically Stored Information, 21 FSM R. 192, 193 (Pon. 2017).

To avoid turning a limited search for particular information into a general search of electronic databases, the courts have established special particularity requirements for searching electronic databases. In re Search of All Electronically Stored Information, 21 FSM R. 192, 193-94 (Pon. 2017).

Although on rare occasions, the police may have reason to believe that all of the digital information in a particular device contains evidence of a crime, judges must be vigilant in observing the FSM Constitution's particularity requirement. In re Search of All Electronically Stored Information, 21 FSM R. 192, 194 (Pon. 2017).

When, due to the lack of particularity required by the FSM Constitution, the court is not satisfied that the search warrant application and affidavit are sufficient to grant a warrant for electronically stored information, the application will be denied. The court must tread carefully because the law in this area is still developing and expanding dramatically as the digital age matures. In re Search of All Electronically Stored Information, 21 FSM R. 192, 194 (Pon. 2017).

A search warrant application may be resubmitted in order to conform to the customary practice and constitutional limitations for electronic searches. In re Search of All Electronically Stored Information, 21 FSM R. 192, 194 (Pon. 2017).

The collateral bar rule applies to the execution of search warrants. The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government, and it has an especially strong interest in minimizing the use of violent self-help to resolve those disputes particularly when a proper accommodation of those interests requires that a person, claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant, test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. Governor v. Chuuk House of Senate, 21 FSM R. 428, 435 (Chk. S. Ct. Tr. 2018).

Article III of the Chuuk Constitution prohibits the court from issuing a warrant unless there is probable cause, supported by affidavit, specifically describing the person to be seized. Chuuk v. Kincho, 22 FSM R. 411, 413 (Chk. S. Ct. Tr. 2019).

An affidavit supporting probable cause is not deficient when the signature line says "notary public" below it, but the signature is that of an FSM Supreme Court court clerk and her signature is sealed by the court's seal. Nor is the inadvertent omission of the date on the line is provided for entry of the date above the clerk's signature, which the court clerk apparently neglected to fill it in before she signed, fatal to the warrant application or the warrant itself. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

The border search exception to the constitutional search warrant requirement applies equally to persons and goods leaving the country as it does to persons and goods entering the country. A border search, or a search at the functional equivalent of a border, of outgoing passengers or goods requires neither a warrant nor probable cause. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. The search warrant application must particularly identify the specific property to be seized and name or describe the place to be searched. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 (Pon. 2020).

Courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. A technical error in description is not automatically fatal to a search warrant's validity. Absolute precision is not required in identifying the things to be seized. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 462 (Pon. 2020).

A search warrant application's misidentification of a helicopter's corporate owner is not fatal to the search warrant application or to the issued warrant because that a person owned the helicopter through one corporation and not through the another corporation, is a technical defect when it was that person being investigated and the helicopter was described with sufficient particularity that the officers conducting the search had no trouble identifying it as the thing sought when they found it. That the application misstated how that person controlled the helicopter is a mere technical defect which cannot invalidate the search warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

When the Secretary of Justice has granted a foreign state's request to obtain evidence, the FSM may apply to the Supreme Court for a search warrant; or an evidence-gathering order. The statute is disjunctive. The FSM may apply for, and the court may issue, one or the other – either a search warrant or an evidence-gathering order. Or, the FSM could apply for, and be granted, both. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

A search warrant specifies the property to be searched for, and after the search warrant's execution, a receipt is left for the property taken and a return is made with the inventory of the property taken. A search warrant, by its nature, always anticipates the seizure, if found, of the property sought in the warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

Evidence-gathering orders, under 12 F.S.M.C. 1709(1)(b), involve the gathering of evidence by methods other than by a search warrant, under 12 F.S.M.C. 1709(1)(a), commanding the search for, and seizure of, particular things. An evidence-gathering order may involve taking testimony, the collecting or recording of data, or producing things, documents, or copies. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

An FSM search warrant issued in response to a foreign mutual assistance request, is not a confiscation order, foreign or otherwise. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

No bond is required in order to seize property pursuant to a search warrant, but when property has been seized pursuant to a foreign state's request for mutual assistance, the Secretary of Justice, not the real party in interest, has the power to assure the foreign state's compliance with any terms or conditions that are imposed in respect of the sending abroad of the thing. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).

A party generally cannot assert the rights of a third party as its own when challenging a search warrant. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 464 (Pon. 2020).