

630
FSM v. Kimura
19 FSM R. 630 (Pon. 2015)

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,

Plaintiff,

vs.

KAZUHIRO KIMURA (Captain) and
OHKURA GYOGYO CO. LTD. (Owner),

Defendants.

CRIMINAL CASE NO. 2014-503

ORDER

Beauleen Carl-Worswick
Associate Justice

Hearing: December 5, 2014
Decided: January 7, 2015

APPEARANCES:

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HEADNOTES

Criminal Law and Procedure – National Crimes; Jurisdiction

Under 11 F.S.M.C. 104(7)(b)(i), the FSM Supreme Court has jurisdiction over any crime committed in the FSM Exclusive Economic Zone. FSM v. Kimura, 19 FSM R. 630, 633 (Pon. 2015).

Marine Resources

Where he has reasonable cause to believe that an offense against the provisions of Title 24 or any regulations made thereunder has been committed, any authorized officer may, with or without a warrant or other process, stop, board and search inside the fishery waters, or outside after hot pursuit, any fishing vessel which he believes has been used in the commission of that offense and he may, within the fishery waters, arrest any person if he has reasonable cause to believe that such person has

committed a Title 24 offense and seize any fishing vessel involved, its fishing gear, furniture, appurtenances, stores, cargo, and fish, and seize any fish which he reasonably believes to have been taken in violation of Title 24. FSM v. Kimura, 19 FSM R. 630, 633-34 (Pon. 2015).

Marine Resources

All licensed fishing vessels are required to send their position to NORMA when they enter or exit the FSM EEZ, and when in the FSM EEZ, the vessels are required to activate their transponder, broadcasting a unique signal to the FSM's Vessel Monitoring System which regularly records its location. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Admiralty; Search and Seizure – Probable Cause

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).

Criminal Law and Procedure – Standard of Proof; Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

Search and Seizure – Probable Cause

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).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On December 5, 2014, the Court held a probable cause hearing in this matter. All parties were present at this hearing. Attorney General April Dawn Skilling represented the Federated States of Micronesia (FSM), Department of Justice (Government), with Assistant Attorney General Caroline Rugero (Rugero). Attorney Kembo Mida (Mida), represented the defendants Kazuhiro Kimura (Captain), and Ohkura Gyogyo Co. Ltd. (Ohkura). Sumito Kasai, Manager of the President's Office, was present

on behalf of Ohkura. Additionally, Dr. Takuya Nagaoka, provided translation into Japanese for the defendants and the court. The hearing lasted one day and four people testified at this hearing: 1) FSM National Police Officer Whylik Alfons (Alfons); 2) Acting Commander Baron Mendiola (Mendiola); 3) FSM National Police Officer Akiny Martin (Martin); and 4) National Oceanic Resource Management Authority (NORMA) observer Arthur Segal (Segal). The court notes that two affidavits supporting probable cause were filed in this case by Mendiola and Martin.

Upon CONSIDERATION of the testimony, and of the file and record contained herein, the court finds that the Government had probable cause to arrest the defendants based on the following conclusions of fact and law:

I. FACTS

The *Tokiwa Maru No. 28 (Tokiwa)* is a purse-seine fishing vessel flagged in Japan with registration number: NG1120. The *Tokiwa* has a fishing permit issued by NORMA number: FM14-JP34053PS-01. The permit is valid from January 1, 2014, to December 31, 2014, and allows the *Tokiwa* to fish in the FSM Exclusive Economic Zone (EEZ). On November 4, 2014, Commander Mendiola of the FSS Independence left port in Pohnpei, as instructed by the Government, to intercept the *Tokiwa*. On November 6, 2014, Mendiola was able to contact the *Tokiwa* on VHF Channel 16 after it had left the FSM EEZ and was in the high seas. Mendiola requested that the vessel return to the FSM EEZ to be inspected and the Captain complied. Later that same day, at 5:50 AM, the vessel was stopped and boarded by five (5) FSM National police officers.¹ Following orders from the Government, Mendiola instructed the boarding party, to inspect the Captain's Logbook, Catch log, and other documents, for corroboration with notes taken from NORMA observer Segal. Specifically, Officer Martin was asked to check the records for activities on three dates: 1) August 14, 2014; 2) August 24, 2014; 3) September 8, 2014. After checking the captain's logs, and other records, Martin arrested the Captain without a warrant and escorted the *Tokiwa* back to Pohnpei. On November 14, 2014, a criminal information and a penal summons were filed by the Government in the FSM Supreme Court, Pohnpei Trial Division.

II. JURISDICTION

Pursuant to 11 F.S.M.C. 104(7)(b)(i), this court has jurisdiction of any crime committed in the FSM EEZ. The FSM EEZ, as defined in title 18, extends 200 nautical miles from each island or atoll.² Furthermore, pursuant to 24 F.S.M.C. 513(2), "Where he has reasonable cause to believe that an offense against the provisions of this title or any regulations made under this title has been committed, any authorized officer may, with or without a warrant or other process:

(a) Following hot pursuit in accordance with international law and commenced within the fishery waters, stop, board and search inside or outside the fishery waters any fishing vessel which he believes has been used in the commission of that offense within the

¹ The boarding party consisted of FSM National Police Officers: 1) Akiny Martin; 2) Efren Eliou; 3) Lindsley Talley; 4) Dexter Paul; and 5) Semes Etiker.

² 18 F.S.M.C. 108(1) defines an atoll as: "a naturally formed reef system which has one or more islands situated on the reef system, including Ngulu, Ulithi, Sorol, Eauripik, Woleai, Faraulep, Ifalik, Olaimarao, Elato, Lamotrek, West Fayu, Puluwat, Pulap, Pulusuk, Namonuito, Kuop, Nomowin, Murilo, Losap, Namoluk, Satawan, Etal, Lukunor, Minto Reef, Oroluk, Nukuoro, Kapingamarangi, Pakin, Ant, Sapwuafik, Mwoakiloa, and Pingelap."

fishery waters or in relation to which he believes such offense has been committed and bring such vessel and all persons and things on board within the fishery waters;

(b) Within the fishery waters: (i) Arrest any person if he has reasonable cause to believe that such person has committed an offense prohibited by this title or any regulations issued under this title; (ii) Seize any fishing vessel used or employed in, or when it reasonably appears to have been used or employed in, the violation of any provision of this title or any regulations issued under this title; (iii) Seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in or on a fishing vessel seized pursuant to this section; and (iv) Seize any fish which he reasonably believes to have been taken or fish products produced in violation of any provision of this title or any regulations issued under this title.

Mendiola testified that when he left port on November 4, 2014, the *Tokiwa* was 180 nautical miles south of the Pulusuk atoll in Chuuk and within the FSM EEZ, but was unable to contact the vessel until it was approximately 20 miles into the high seas. Mendiola further testified that the Captain of the *Tokiwa* voluntarily returned to the FSM EEZ for inspection. Alfons testified that all licensed vessels are required to send their position to NORMA when they enter or exit the FSM EEZ. Further, at all times while in the FSM EEZ, the vessels are required to activate their transponder, broadcasting a unique signal to the FSM's Vessel Monitoring System (VMS) which regularly records the vessels location. Alfons testified that using the VMS he can confirm that the *Tokiwa* was in the FSM EEZ on the three dates that the alleged offenses occurred.³ Martin testified that his inspection of the Captains log, catch log, and other documents, did in fact corresponded with the allegations in the NORMA observer Segal's report, corroborating that the alleged acts occurred within the FSM EEZ. Finally, Segal himself testified that the *Tokiwa* was within the FSM EEZ at the time of alleged violations. The court finds these three testimonies, made by FSM National police officers and the NORMA observer were sufficient to establish jurisdiction in this matter and that the alleged crimes occurred within the FSM EEZ.

III. PROBABLE CAUSE

Probable cause is "a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed." Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985); FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588-89 (Pon. 1994) (evidence and information); Ludwig v. FSM, 2 FSM Intrm. 27, 33 (App. 1985) (more likely than not that the accused is guilty of the offense).⁴ "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." Ishizawa, 2 FSM Intrm. at 77.

³ The Information lists 10 counts in violation of the following title 24 statutes: 24 F.S.M.C. 906(1)(a); 24 F.S.M.C. 901(1)(c); 24 F.S.M.C. 116(2); 24 F.S.M.C. 906(1)(c); 24 F.S.M.C. 906(1)(d); 24 F.S.M.C. 115(1)(a)(iii); 24 F.S.M.C. 115(1)(a)(iv). Those ten counts can be summarized into three main categories of allegations: 1) Fishing on a FAD; 2) Misrepresentation of the logbook; and 3) Contamination of the FSM EEZ.

⁴ "In a post-seizure hearing in a civil forfeiture case the standard would be defined by reference to [24 F.S.M.C. 513(2)]." FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 302 n.1 (Kos. 1995). Title 24 was amended based on the Ishizawa decision and is "nearly identical" to the criminal standard. *Id.* at 303 n.1.

FELLOW-OFFICER RULE

Under the collective knowledge doctrine is a specific application called the "Fellow-Officer Rule." This rule 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." BLACK'S LAW DICTIONARY 650 (8th ed. 2004). The Fellow-Officer rule was first upheld by the United States Supreme Court in Whitely v. Warden Wyo. State Penitentiary, 401 U.S. 560, 91 S. Ct. 1031, 28 L. Ed. 2d 306 (1971). There are many local variations on the expression of this rule, but it is near universal in its general application.⁵ The FSM has not previously articulated this rule, but does so now.⁶

HEARSAY

The "probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence . . . do not apply." Zhong Yuan Yu No. 621, 6 FSM at 589. Thus pursuant to FSM Criminal Rule 4(b), "[t]he 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. To the same end, 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, this Court may discount unreliable hearsay.

FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 304 (Kos. 1995) (citations omitted). Thus "hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement of some other unidentified person." *Id.* (citation omitted). Likewise, "[h]earsay within hearsay" might also be excluded as unreliable and is "less reliable as the number of levels of hearsay increase." *Id.* at 304.⁷

⁵ One variation has been to extend this rule to include other government agencies working with the police. Johnson v. State, 660 So.2d 648, 654 (Fla. 1995) (information shared by officers investigating a crime is imputed to any one of their number, even those from different agencies working together). Another variation is to limit this rule to require that the investigating agency have actual knowledge of the facts supporting probable cause, rather than constructive knowledge. United States v. Valez, 796 F.2d 24, 28 (2d Cir. 1986) (The rule that permits courts to assess probable cause to arrest by looking at the collective knowledge of the police force-instead of simply looking at the knowledge of the arresting officer-should not affect the law of mistaken arrest. The rule exists because, in light of the complexity of modern police work, the arresting officer cannot always be aware of every aspect of an investigation; sometimes his authority to arrest a suspect is based on facts known only to his superiors or associates).

⁶ In FSM v. Cheng Chia-W (II), this court has applied the collective knowledge doctrine to support corporate liability against a ship owner, but has never before applied the collective knowledge doctrine to the Government under Fellow-Officer Rule. 7 FSM Intrm. 205, 213, (1995).

⁷ In Yue Yuan Yu No. 708, the court did not find that the Government's reliance on hearsay was sufficient to show probable cause when "the affidavit contained information that was told to the affiant by

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." *Id.* (quotation omitted) (citation omitted). "The Court is reluctant to allow representations of counsel to substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits." *Id.* "For the Court to give the affidavit the weight the FSM asserts, there must be an additional measure of reliability" or "an explanation of those exigent circumstances that make it impossible to produce more reliable evidence." *Id.* On the other hand, "courts routinely find that hearsay provided by other law enforcement officers . . . are reliable without requiring any additional showing." 1 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 52, at 63 (4th ed. 2008).⁸ 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 *Id.* at 65.⁹ In short, who the informant is affects how the court weighs credibility behind the allegations supporting probable cause.

BURDEN OF PROOF

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." Zhong Yuan Yu No. 621, 6 FSM at 589. See 12 F.S.M.C. 218(5).¹⁰ "In this hearing, the government bears the burden of proving it had probable cause to seize the vessel." Yue Yuan Yu No. 708, 7 FSM Intrm. at 305 (citation omitted). Furthermore, "[t]here 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." Payne v. Dekalb County, 414 F. Supp. 2d 1158, 1172 (N.D. Ga. 2004).

The prosecution's presentation of this case is troublesome. Martin testified that he inspected the catch log sheet for illegal activity as instructed by Mendiola. Martin further testified that there was nothing on the Captain's log sheet that indicated the vessel had been fishing on a fish aggregating

some other person not before the court." 7 FSM at 304 (citation omitted). The court noted that "The number of levels of hearsay is not certain but it is at least three and possibly more." *Id.*

⁸ In *United States v. Ventresca*, the United States Supreme Court found that "[o]bservations of fellow officers of the Government engaged in a common investigation are a plainly reliable basis" for supporting probable cause and do not require independent corroboration. 380 U.S. 102, 111, 85 S. Ct. 741, 747, 13 L. Ed. 2d 684, 690 (1965).

⁹ A finding of probable cause based on information from a unknown informant is generally made under the totality of the circumstances test as established in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). This decision replaced the *Aguilar-Spinelli* two pronged test, by establishing a "fluid concept" that recognizes the closely intertwined issues and dependent nature between reliability and the basis of knowledge. *Id.* at 230-32, 103 S. Ct. at 2328-29, 76 L. Ed. 2d at 543-44. "A deficiency in one may be compensated for . . . by a strong showing in the other." *Id.* at 233, 103 S. Ct. at 2329, 76 L. Ed. 2d at 545.

¹⁰ Probable cause determinations are preferably made prior to arrest and seizure. However, "[m]any FSM seizures take place on the high seas, and vessels are often arrested at outer islands. Since probable cause determinations must be made quickly, it may not always be possible for the FSM or a State to bring the witnesses necessary to the hearing or to have them prepare affidavits to be transmitted to the Court." Yue Yuan Yu No. 708, 7 FSM Intrm. at 305.

device (FAD), but that he would not have expected to see such an admission.¹¹ Nevertheless, he ordered the arrest of the vessel. Martin testified that the arrest was partly based on additional information given to him by Mendiola, his commanding officer. Martin was told that information came from the NORMA observer's report (Report) authored by Segal. Mendiola testified that he received that information from his commanding officers in the Government, but did not specify the name of that person. Thus, neither Mendiola nor Martin had personally read the entire report at that time of the arrest, and had only seen a summary of the allegations contained therein. At no time was the name of the person, or persons, from the Government from whom this information passed revealed during the hearing. This is hearsay, and the court is not certain how many layers of hearsay actually occurred in relaying this information from NORMA through the various levels of the Government. The court only knows, from the testimony that at least one more level occurred, making a minimum of three levels of hearsay in relaying the information.¹² The Report itself was never submitted to the defense counsel, or the court, even though, according to representations made by the Government, it is readily available. Its absence is mystifying, as it forms the basis for the arrest and it is one of the core pieces of evidence supporting the Government's belief in probable cause at the time. That being said, the inspection of the Captain's logbook by Martin corroborated the dates and activities of the summary of the allegations in the Report, giving this hearsay the indicia of reliability. Furthermore, the court notes that NORMA observers are a type of law enforcement agent, who work for the executive branch, and whose primary purpose is to observe, record, and report infractions of title 24.¹³ As testified to by Segal, NORMA spends considerable time and money training observers and making sure that they accurately record data on their voyages.¹⁴ NORMA observers make entries every day, and always include certain information on a designated form. They are impartial; they are not paid by the number of infractions they report, nor do they have a quota to meet. As a result, the Government argued that FSM national police officers are entitled to rely on information passed from NORMA observers just as if it were from a fellow officer. Notably, Mendiola testified that Segal was personally interviewed by the Government, but was at sea aboard another vessel at the time of the arrest. The investigating officers and boarding party, therefore, had to rely on this Report. Even though the Report itself was not submitted, at this hearing, Segal testified that he personally observed the Captain and crew fishing on a log, and a live whale shark, on the dates in question. He also testified to personally observing the discrepancies in the records; specifically identifying the misrepresenting of 5 species of by-catch when the Captain's log recorded only 2; as well as observing the crew throwing trash overboard, specifically including plastics. Further, Segal testified that he wrote the Report and submitted it to NORMA before embarking on a second observation at sea. Ultimately, the Government argued that the veracity of the Report, confirmed after independent corroboration by Martin, combined with the fact that the NORMA observer is an agent of the executive branch, and well trained in these tasks, should be given the full weight and credibility they are entitled to.

¹¹ This fact can be used to indicate that the log sheets were incomplete, or that the Captain was misrepresenting his fishing activities, but could alternatively be understood to undermine the allegation that the vessel was fishing on a FAD. This confusion was clarified by testimony.

¹² According to the testimony, Martin relied on information passed from Mendiola and Mendiola relied on information passed to him from his commanding officer. After this, the testimony does not clearly delineate, but suggests that the unnamed commanding officer relied on information passed through one, or more, officers in the legal department, which was in turn was based on an exit interview conducted by still other officers from the Government.

¹³ The observer program was created by statute under 24 F.S.M.C. 106(1)(b).

¹⁴ Segal testified that he had been trained by the Forum Fisheries Agency, the Secretariat of the Pacific Community and also had an Associate's Degree in Marine Biology from the College of Micronesia.

The court finds that the information and evidence in this case was sufficient to support probable cause by the Government at the time of the arrest. Although no one officer had all of the information, collectively the agency did, and one or more officers from the Government had the actual knowledge of each fact necessary to support the belief. Furthermore, officers of the Government are entitled to rely on representations from fellow officers, when those representations are corroborated upon investigation and do not show the indicia of error. Similarly, the Government may rely on hearsay derived from other investigative agencies, specifically NORMA observers. Thus, regardless of the number of hearsay layers, these intermediaries should all be presumed reliable. This court expressly distinguishes the current set of facts and circumstances from Yue Yuan Yu No. 708, based on the substantial supporting testimony presented at the hearing, including the three primary officers involved in the arrest, and the testimony of the informant himself, a trained government agent, and first hand observer of the incidents, NORMA observer Segal. This court also distinguishes the present case from Ishizawa, in that the eyewitness in that case was an ordinary fisherman who claimed to have seen the events, but upon investigation his report was shown unreliable and not corroborated by other facts. 2 FSM Intrm. at 70.

IV. CONCLUSION

The court finds that jurisdiction was proper and that all of the alleged acts occurred within the FSM EEZ. The court also finds that probable cause must be made from a reasonable person 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 the actual knowledge of any one particular officer. Additionally, 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. Finally, the Court notes that 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. It is for these reasons that the court finds that a reasonably cautious person would have had cause to believe that a crime had been committed in this case.

Upon CONSIDERATION of the testimony presented in court, and of the file and record contained herein, probable cause existed at the time of arrest. ACCORDINGLY, the defendants' motion to dismiss is DENIED. The court sets a pretrial conference with the purpose of setting a trial schedule for Tuesday, January 20, 2015, at 9:30 AM in the FSM Supreme Court, Palikir. Both parties should be prepared to set deadlines dates for the completion of discovery, pretrial motions, potential plea and trial dates. If the parties agree to and file a stipulated pretrial schedule prior to this date, the hearing will be vacated.

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