

JUL - 1 2004

For The Northern Mariana Islands
By _____
(Deputy Clerk) *JP.*

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
ZHU, Lian Kun,)
)
Defendant)
_____)

Criminal No. 03-00018

ORDER DENYING
DEFENDANT'S DISCOVERY
AND SUPPRESSION MOTIONS

THIS MATTER came before the court on Thursday, July 1, 2004, for hearing of defendant's motions to suppress tape recorded conversations between defendant and a government informant and for production of a written note between a woman (who will probably testify for the plaintiff at trial) and her incarcerated boyfriend. Plaintiff appeared by and through its attorney, Assistant U.S. Attorney Patrick J. Smith; defendant appeared personally and by

1 and through his attorney, F. Matthew Smith.

2 THE COURT, having considered the written and oral arguments of
3 counsel, denied both motions for the following reasons.
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5 Defendant complains that, despite his timely, written request, he has not
6 yet received a copy of the handwritten note from WANG, Yang to his
7 girlfriend, alleged informant, and probable witness in the case, JIANG, Li Jia.
8 Defendant argues that the note is within the control of plaintiff and that the
9 note will show motive and bias and is material to his defense.
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12 There appears to be no serious dispute about the facts surrounding the
13 note or its contents. WANG, then a federal prisoner being transported to the
14 mainland by DEA/CNMI Task Force Agent Ray Renguul, asked Agent
15 Renguul to deliver a note, written in Chinese, to WANG's girlfriend, JIANG,
16 Li Jia. Agent Renguul honored the request, after first having the note read to
17 him by a translator. In a report submitted to the court by YANG's attorney,
18 WANG, JIANG, and Agent Renguul all agree that the thrust of the note was
19 WANG's request to JIANG to cooperate with federal law enforcement
20 authorities in hopes that such cooperation would somehow better his situation.
21 JIANG stated that she destroyed the note because she did not want anyone to
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1 know she was cooperating with the federal government. Thus, it appears that
2 the original of the note has been destroyed and that Agent Renguul never
3 obtained a written translation, but only had the note read to him by a
4 translator.
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7 There is no argument that the note was evidence which was intentionally
8 destroyed and that issue is not before the court. The three people who had
9 knowledge of the note tell consistent stories as to its genesis, content, and fate.
10 Plaintiff's attorney, as an officer of the court, has represented to the court and
11 defendant that the note is not in plaintiff's possession, nor are any recordings of
12 the conversations between paramours WANG and JIANG. Thus, there is
13 nothing for plaintiff to turn over to defendant.
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17 Defendant's argument that the note would show motive and bias is not
18 foreclosed simply because the note no longer exists. Any possible prejudice to
19 defendant is sufficiently ameliorated by his ability to examine JIANG and Agent
20 Renguul at trial. Similarly, absent sustainable objection by plaintiff, he can
21 enquire about the telephone conversations between WANG and JIANG.
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1 As to any written notes by Agent Renguul about his interactions with
2 WANG and JIANG, plaintiff's attorney represented to the court that, even
3 though all such reports are exempt from discovery by Fed.R.Crim.P. 16(a)(2),
4 they have been provided or will be provided consistent with plaintiff's discovery
5 obligations. The court accepts that representation as true.
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8 Defendant Zhu next argues that tape recorded conversations in which he
9 was a participant must be suppressed because they were conducted by CNMI/
10 DEA agents, both federal and Commonwealth, without a warrant and, hence,
11 were in violation of Commonwealth Constitution Art. I, §§ 3(b) and 10.
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13 Respectively, these two sections provide that wiretapping or other electronic
14 eavesdropping may not be conducted without a warrant, even if one of the
15 parties to a conversation consents, and that "the right of individual privacy shall
16 not be infringed except upon a showing of compelling interest."
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20 Plaintiff responds that, in this federal prosecution, the Supremacy Clause
21 of the United States Constitution dictates that federal law must trump any
22 Commonwealth constitutional guarantees to the contrary and that even the
23 Commonwealth Superior Court has recognized that fact. See Commonwealth
24 v. Shimabukuro, Criminal No. 02-0254 (Dec. 10, 2003) ("If this case were in our
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1 respective federal jurisdiction...consent of only one individual [would be]
2 required for recording of conversations without first obtaining a warrant.”)
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4 Generally, federal law controls the admission of evidence in federal
5 prosecutions. See e.g. United States v. Chavez-Vernaza, 844 F.2d 1368, 1373 (9th
6 Cir. 1987). Although a state may apply more stringent requirements on
7 electronic surveillance than does federal law [18 U.S.C. §§ 2510-14, 2516-18,
8 2519-2522 (2000)], federal courts will admit evidence obtained in violation of a
9 more restrictive state law provided the evidence was obtained in accordance
10 with federal law. However, there is a split in the circuits over whether to apply
11 more restrictive state surveillance statutes in federal proceedings when state law
12 enforcement officials conducted the surveillance. The Ninth Circuit applies
13 more stringent state law only when the communications were intercepted by
14 state officers for state prosecutions. See United States v. Butz, 982 F.2d 1378,
15 1382 (9th Cir.), *cert. denied*, 510 U.S. 891, 114 S.Ct. 250 (1993). In all other
16 instances, “the federal statute does not defer to the states.” United States v. Hall,
17 543 F.2d 1229, 1232 (9th Cir. 1976) (*en banc*), *cert. denied*, 429 U.S. 1075, 97 S.Ct.
18 814 (1977).
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Because one of the parties consented to the tape recording of the conversations with defendant Zhu, and because the recordings were not made as part of a Commonwealth prosecution, Butz, *supra*, they are admissible. See 18 U.S.C. § 2511(2)(c); United States v. Shryock, 342 F.3d 948, 977 (9th Cir. 2003).

FOR THE FOREGOING REASONS, defendant Zhu's motions are denied.

DATED this 1st day of July, 2004.


ALEX R. MUNSON
Judge