before or after conviction. Additionally, all defendants were released from custody, on their own recognizance, on May 9.

The necessity for providing vessel security is not for the court to decide. I am satisfied, however, that the law clearly contemplates recovery of the cost thereof out of forfeiture proceedings. 19 T.T.C. 158.

I conclude that the cost of providing police guards is not a proper charge against these defendants. To the extent that the Order of June 27 indicates otherwise, I hereby vacate said Order.

In the Matter of the Application of
HSU DENG SHUNG and HSU DANG BOO
for a Writ of Habeas Corpus

Civil Action No. 575

Trial Division of the High Court

Palau District

August 15, 1972

Petition for habeas corpus brought by convicted persons claiming search and seizure resulted from police questioning without Miranda warning. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that petition would be denied where magistrate who had called police had seen other contraband in plain view.

Habeas Corpus—Availability of Writ

That as a result of answers given in response to questioning by police without Miranda warning, search of vessel was made and contraband found below, did not warrant grant of writ of habeas corpus where magistrate who had called police had already seen other contraband in plain view on vessel's deck, which alone warranted detention and was sufficient to make out criminal offense.

BURNETT, *Chief Justice*

Petitioners, Captain and Fishing Master of a Taiwan

fishing vessel, were convicted, in Palau Criminal Case No. 430, of unlawful entry, unlawful entry of a vessel, and unlawful removal of marine resources. Their application for writ of habeas corpus asserted that unconstitutionally obtained evidence was used against them at their trial.

I denied the writ for the reason that it should not be used in lieu of appeal. There was no representation made in the initial application as to exceptional circumstances which would make it inappropriate to require petitioners to first exhaust their appeal rights. Petitioners moved for rehearing on the grounds of exceptional circumstances. Time for appeal has expired, and motion to extend time was denied. On August 2, following argument, I again orally declined to issue the writ.

It is petitioner's contention that they were questioned without the warnings required by *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, and that "as a direct result of the answers given by them, alleged contraband was seized on their ship and they were therefore arrested, charged for having the alleged contraband and restrained of their liberty."

There is little dispute as to the sequence of events. The trial court found the apprehension of the vessel to have occurred as follows:

"The evidence disclosed without contradiction that during the afternoon of April 27, 1972, the Magistrate of Kayangel Municipality observed the vessel, LIEN KEI SING NO. 3, cruising from North to South and then from South to North very close to the reef, and clearly well within three miles of the reef system of Kayangel Municipality. Noting that the vessel appeared to be unregistered with the Trust Territory, and observing that it was not traveling on a direct route through the waters adjacent to Kayangel, the Magistrate formed the opinion that the vessel might be engaged in violating laws or regulations of the Trust Territory and thereupon pursued the vessel and finally caused it to come to anchor near the entrance to the lagoon. As the vessel neared its point of anchorage, the Magistrate, still aboard another boat, ob-

served fresh clam meat on the open deck of LIEN KEI SING NO. 3. Later on, the Magistrate boarded LIEN KEI SING NO. 3 and observed not only the fresh clam meat which he earlier had seen, but also live trochus and certain scrap metal which he recognized as having come from one of the reefs of Kayangel. The marine life observed aboard the vessel was described as necessarily having been taken from one of the reefs of the reef system of Kayangel, and there was no contradiction whatsoever to this testimony."

Police officers were summoned from Koror, and on their arrival, questioned petitioners and searched the vessel. At no time were petitioners advised of their rights under *Miranda v. Arizona*, supra. The search of the vessel disclosed, among other things, a large amount of clam muscles below deck.

Counsel for petitioners conceded on argument that he was unable to deny the testimony of the Magistrate as to the presence of clams and trochus on the open deck. He suggests, however, that it was the discovery of the clam muscle through illegal search which might well have moved the Court to find petitioners guilty, and that, as stated in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, before constitutional error can be held harmless, the court "must be able to hold a belief that it was harmless beyond a reasonable doubt."

The difficulty with counsel's contention is that the offense was fully made out by the finding of contraband in open view without the necessity of the subsequent search. In that context it made little difference what was disclosed by the search. Petitioners had already been effectively arrested by the Magistrate, on the basis of observed evidence, before the police officers ever arrived.

This situation is remarkably similar to that in *Lockett v. United States*, 390 F.2d 168, (9 C.A. 1968). The defendant there was arrested for burglary of a post office. When arrested he had two money order forms in his possession. Other such forms were discovered in a warrantless search

of his automobile, and introduced in evidence against him. The court, after first finding the search to have been reasonable under *Cooper v. California*, 386 U.S. 58, 87 S.Ct. 788, said: "Moreover even if the search here were an unlawful one, the facts would make this case an almost classical one for the rule stated in Chapman vs. California (supra) . . ." and concluded that evidence taken from the automobile could not have contributed to the verdict.

Here, with uncontradicted evidence of contraband in plain view there was ample grounds for the Magistrate to detain the vessel and crew, as he did. Discovery of further contraband below decks added nothing to proof of the offense.

Additionally, I am by no means convinced that the search was unlawful, in view of the evidence, discovered without search, of a violation of law making the vessel subject to seizure and forfeiture under 19 T.T.C. 107. See *Cooper v. California*, supra, and *Lockett v. United States*, supra, both upholding a warrantless search of a vehicle seized under statute providing for forfeiture.

The application is denied.

LUIS A. BENAVENTE, Plaintiff

v.

FRANCISCO C. ADA, Election Commissioner, Defendant

Civil Action No. 1045

Trial Division of the High Court

Mariana Islands District

August 16, 1972

Action to have municipal election set aside. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that where it was clear from the record that the votes of those persons who were eligible to vote, but were allegedly prevented from doing so due to inability to arrange transportation