

1 **FOR PUBLICATION**

2  
3  
4  
5  
6  
7  
8 **IN THE SUPERIOR COURT**  
9 **OF THE**  
10 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

11 **COMMONWEALTH OF THE** )  
12 **NORTHERN MARIANA ISLANDS,** )

13 **Plaintiff,** )

14 **vs.** )

15 **JOANN B. CABRERA and** )  
16 **ZENITA B. CABRERA,** )

17 **Defendants.** )  
18 )  
19 )

**CRIMINAL CASE NO. 09-0037B**

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO SUPPRESS**

20 **I. INTRODUCTION**

21 THIS MATTER came before the Court on August 4, 2009 at 9:30 a.m. on the  
22 Defendants' Motion to Suppress Statement and Property Evidence based on alleged violations of  
23 the *Miranda* Rule. Defendant Zenita B. Cabrera appeared with her counsel of record Matthew  
24 Holley. Defendant Joann B. Cabrera appeared with her counsel of record Joe Hill. Assistant  
25 Attorney General Brian Gallagher appeared on behalf of the Commonwealth of the Northern  
26 Mariana Islands (Commonwealth).

27 //

28 //

1 **II. BACKGROUND**

2 This case arises out of a theft of a wallet at a restaurant located in Garapan. The  
3 following facts are derived from the briefs submitted by the parties and live testimony presented  
4 during the hearing.

5 On April 1, 2009, at about 6:54 a.m., the Department of Public Safety (DPS) received a  
6 call reporting a theft incident at Café at the Park. Police Officer Jesse Cepeda responded to the  
7 scene and was given the description of two female suspects riding in a white sedan. Officer  
8 Cepeda then left the scene to look for the suspects. At approximately 7:17 a.m., as Officer  
9 Cepeda drove southbound on Beach Road, he sighted two females driving northbound on Beach  
10 Road in a silver Toyota Echo. Officer Cepeda recognized the driver as Zenita Cabrera. Officer  
11 Cepeda recognized Zenita because of her past involvements with the police and because she is a  
12 friend of his girlfriend. Upon passing Zenita as she traveled northbound, Officer Cepeda decided  
13 to make a U-turn and follow Zenita. After following Zenita for several minutes and debating  
14 whether he should pull the vehicle over, Officer Cepeda observed the vehicle make a turn  
15 without signaling. Officer Cepeda then made a violator stop on the vehicle for failing to  
16 properly signal. Before he exited his patrol vehicle, Officer Cepeda radioed to DPS dispatch and  
17 asked for the victim of the theft to be brought to the scene.

18 As Officer Cepeda approached Zenita to explain the reason for the stop, he noticed that  
19 her hands were shaking and she appeared nervous. Seeing this, Officer Cepeda asked Zenita  
20 where she was coming from. Zenita told the officer that they had just come from using the  
21 restroom at a restaurant. Officer Cepeda then asked Zenita which restaurant she used the  
22 restroom at. Upon hearing this, Zenita began crying and stated that she did not want to go to jail.  
23 Officer Cepeda then asked the passenger of the vehicle, whom he recognized as Zenita's sister  
24 Joann Cabrera, if she had taken the wallet. Joann replied that they did not want to go to jail.  
25 Officer Cepeda then asked Zenita to get out of the vehicle. He spoke with her for several  
26 minutes and then asked Joann to get out of the car. Since Officer Cepeda knew Zenita and  
27 Joann, he implied that if they showed him where they threw the wallet, he would not arrest them.  
28 The defendants then told Officer Cepeda to follow them as they drove to the location where they

1 disposed of the wallet. Officer Cepeda refused the offer and instead instructed both Zenita and  
2 Joann to ride in his squad car and direct him to the location. By this point other police officers  
3 began arriving at the scene. At no point during this interaction did Officer Cepeda give Zenita or  
4 Joann their Miranda rights.

5 Once inside the police car, Zenita and Joann directed Officer Cepeda to a dumpster in  
6 Garapan. Officer Cepeda relayed his location to DPS dispatch, where he was met by Officers  
7 Tanaka and Seman. Officer Cepeda ordered both Zenita and Joann to exit the police car and  
8 stand next to it while he searched the dumpster for the wallet. After the wallet was recovered,  
9 Officer Tanaka performed a standard pat down on Zenita. Officer Tanaka felt a bump or small  
10 bulge in Zenita's pants pocket and subsequently reached into Zenita's pocket to determine what  
11 the contents were. Officer Tanaka discovered the bump in Zenita's pocket was money. Officer  
12 Tanaka then asked Officer Seman to arrest Zenita. At no point during her interaction with Zenita  
13 did Officer Tanaka give Zenita her Miranda rights. Officer Seman then arrested Zenita. Officer  
14 Seman did not read Zenita her Miranda rights before he arrested her. Joann was also arrested at  
15 this time. No police officer read Joann her Miranda rights before she was arrested. Both  
16 defendants were Mirandized at the police station.

### 17 18 **III. DISCUSSION**

19 Defendants seek to suppress incriminating statements they made and the physical  
20 evidence derived from those statements because they were not advised of their *Miranda* rights.  
21 The Court will address each issue in turn.

#### 22 23 **A. Incriminating Statements**

24 Under *Miranda v. Arizona*, the prosecution may not offer statements made by a defendant  
25 under custodial interrogation unless it demonstrates the use of procedural safeguards effective to  
26 secure the privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).  
27 The *Miranda* Court defined 'custodial interrogation' as "questioning initiated by law  
28 enforcement officers after a person has been taken into custody or otherwise deprived of his

1 freedom of action in any significant way.” *Id.* To determine whether custody exists, the  
2 Commonwealth Supreme Court adopted the reasonable person test. The appropriate test “is  
3 whether a reasonable person in the defendant’s position would believe that he or she was in  
4 police custody of the degree associated with a formal arrest.” *Commonwealth v. Ramangmau*, 4  
5 N.M.I. 227, 235 (1995) (citing *Connecticut v. DesLaurier*, 646 A.2d 108, 111 (Conn. 1994). The  
6 most important factor is whether the atmosphere was police dominated. *Id.* An ‘interrogation,’  
7 “under *Miranda*, refers not only to express questioning, but also to any words or actions on the  
8 part of the police (other than those normally attendant to arrest and custody) that *the police*  
9 *should know are reasonably likely to elicit an incriminating response* from the suspect.” *Rhode*  
10 *Island v. Innis*, 446 U.S. 289, 300-01 (1980) (Emphasis added). However, “[a]ny statement  
11 given freely and voluntarily without any compelling influences is, of course, admissible as  
12 evidence.” *Id.* at 299-300.

13 Here, the facts show that Officer Cepeda wanted to stop the defendants’ vehicle soon  
14 after he first saw them. When Zenita turned without signaling, it presented a valid reason for  
15 Officer Cepeda to pull the vehicle over. With a valid reason to stop the defendants’ vehicle,  
16 Officer Cepeda could use the stop as a means of investigating other suspected illegal activity.  
17 *See Whren v. United States*, 517 U.S. 806, 809 (1996) (Regardless of whether a police officer  
18 subjectively believes that the occupants of an automobile may be engaging in some other illegal  
19 behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances  
20 could have stopped the car for the traffic violation). As Officer Cepeda approached the vehicle,  
21 he noticed the nervousness of Zenita because her hands were visibly shaking. At this point,  
22 Officer Cepeda was suspicious, but started his interaction with the defendants with a general  
23 question, asking where they were coming from. After learning that they were coming from a  
24 restaurant and with knowledge that a theft occurred at a restaurant, Office Cepeda inquired as to  
25 which restaurant they were coming from. Zenita then voluntarily exclaimed that they did not  
26 want to go to jail. Without any further exploratory questions, Officer Cepeda jumped to  
27 specifically asking if they took the wallet. In response to that question, Joann also replied that  
28 they did not want to go to jail. Since Officer Cepeda suspected the defendants were responsible

1 for the theft, his question was designed to elicit an incriminating response and was therefore  
2 interrogation under *Innis*. However, the *Innis* Court concluded that *Miranda* safeguards are only  
3 necessary when a person *in custody* is subjected to police interrogation. *Innis*, 446 U.S. at 300-  
4 01.

5 Ordinarily, a traffic stop does not involve custody for purposes of *Miranda* warnings  
6 before beginning custodial interrogation. *Berkemer v. McCarty*, 468 U.S. 420 (1984); *see also*  
7 *Pennsylvania v. Bruder*, 488 U.S. 9 (1988) (Although unquestionably a seizure, the stop in  
8 general was a noncoercive atmosphere); *United States v. Sullivan*, 138 F.3d 126, 130-131 (4th  
9 Cir. 1998) (While a motorist during a routine traffic stop is detained and not free to leave, the  
10 motorist is not in custody for *Miranda* purposes). Even though under the Commonwealth's  
11 reasonable person test, a reasonable person in Zenita's or Joann's position would not believe that  
12 they were in police custody of the degree associated with a formal arrest, they, like most  
13 motorists, did not feel free to leave the scene of the traffic stop without being told they might do  
14 so. *See Sullivan*, 138 F.3d at 130. The usual traffic stop is more analogous to a *Terry* stop than  
15 to a formal arrest. *Sullivan*, 138 F.3d at 131. Essentially, when Officer Cepeda asked defendants  
16 if they took the wallet, the defendants were temporarily detained pursuant to an ordinary traffic  
17 stop and were not in custody for *Miranda* purposes, thus the question was proper without  
18 *Miranda* warnings.

19 Even after Officer Cepeda asked both defendants to get out of the vehicle, the traffic stop  
20 did not rise to the level of a formal arrest. *See Pennsylvania v. Mimms*, 434 U.S. 106 (1977)  
21 (Police officer ordered driver stopped for traffic violation out of car is a seizure but permissible  
22 under the Fourth Amendment). At this point Officer Cepeda implied that he would not arrest  
23 them if they showed him where the stolen property was. The defendants then voluntarily stated  
24 that they would drive to the location where they disposed of the wallet and Officer Cepeda could  
25 follow them.<sup>1</sup> Seemingly, this confession, as to knowing the location of the stolen wallet, was in  
26

---

27  
28 <sup>1</sup> The Court is not certain as to which defendant told Officer Cepeda they could show him the location of the wallet. Neither the briefs filed nor the live testimony clarified these specific facts. At this point, the Court assumes that both defendants took part in telling Officer Cepeda that they knew the location of the stolen wallet.

1 response to Officer Cepeda’s implied promise. However, defendants were not in custody or  
2 formally arrested, and while not free to leave, defendants were free to not reply to Officer  
3 Cepeda’s implied promise. It was not until Officer Cepeda placed Zenita and Joann into his  
4 police car that the temporary detention from the traffic stop became custody for the purposes of  
5 *Miranda*. Placing the defendants into the patrol car subjected them to a completely police  
6 dominated atmosphere and significantly deprived them of their freedom of action, essentially  
7 taking them into formal custody. *Miranda*, 384 U.S. at 444. Once the defendants were placed  
8 into police car, Officer Cepeda should have advised them of their *Miranda* rights. Since he  
9 failed to do so, any statements in response to police interrogation made by Zenita and Joann after  
10 being placed into the police car and continuing until they received their *Miranda* warnings must  
11 be suppressed as a violation of the *Miranda* rule.

12  
13 **B. Physical Evidence**

14 The *Miranda* rule protects against violations of the *Self-Incrimination Clause* of the Fifth  
15 Amendment; however, the *Self-Incrimination Clause* is not implicated by the admission into  
16 evidence of the physical fruit of a voluntary statement. *United States v. Patane*, 542 U.S. 630,  
17 636 (2004) (plurality opinion). Consequently, the *Miranda* rule does not bar the introduction of  
18 nontestimonial evidence obtained as a result of voluntary statements. *Id.* at 637. Here,  
19 defendants were unwarned of their rights under *Miranda* but made voluntary statements as to  
20 the location of the stolen wallet. Regardless of whether the defendants were not given their  
21 *Miranda* rights before any voluntary statements were made, such statements were voluntary, and  
22 thus the physical evidence obtained as a result of the defendants’ statements is admissible.  
23 Furthermore, the money discovered in Zenita’s pocket was found during a standard pat down  
24 prior to arrest and is also admissible.

25 //  
26 //  
27 //  
28 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendant's Motion to Suppress Statement and Property  
3 Evidence is GRANTED in PART and DENIED in PART.

4  
5 **SO ORDERED** this 19<sup>th</sup> day of August, 2009.

6  
7  
8 /s/  
9 **ROBERT C. NARAJA,**  
10 Presiding Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28