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IN THE SUPERIOR COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. ALEXANDER P. SABLAN, et al., Defendant.	CRIMINAL CASE NO. 08-212 ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS STATEMENT

THIS MATTER CAME FOR HEARING on August 24, 2009, at 9:00 a.m. in courtroom 217A. Assistant Public Defender Douglas W. Hartig appeared on behalf of defendant Alexander P. Saplan ("Defendant"). Assistant Attorney General Matthew Meyer appeared on behalf of the Commonwealth of the Northern Mariana Islands (the "Government"). Having considered the arguments of counsel, the pleadings, materials on record, and the relevant rules and case law, the Court is prepared to rule.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Information alleges three counts against Defendant arising from events taking place on or about May 10, 2008. Specifically, Defendant is charged with criminal mischief, riot, and assault and battery. Defendant has moved to suppress a statement he made to police in an interview conducted at the CIB office in Susupe on or about May 12, 2008. In ruling on the motion, the Court must determine two related but distinct issues. The first is whether Defendant's statement was taken from him involuntarily as a result of police coercion. The second is whether Defendant knowingly, intelligently and voluntarily waived his Fifth Amendment rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), before making his statement to police.

II. DISCUSSION

A. Voluntariness of Defendant's Statement

1. *Standard*

By virtue of the Due Process Clause of the Fourteenth Amendment, "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned."[1] *Miller v. Fenton*, 474 U.S. 104, 109 (1985). Accordingly, the U.S. Supreme Court has held that only voluntary confessions are admissible. *See, e.g., Mincey v. Arizona*, 437 U.S. 385, 401-02 (1978). The government bears the burden of proving that a confession was voluntary by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489 (1972); *Commonwealth v. Mendiola*, 976 F.2d 475, 484 (9th Cir. 1992). Coercive police conduct is necessary for a finding of involuntariness. *Colorado v. Connelly*, 479 U.S. 157, 170 (1986). The test for voluntariness is whether, viewing the totality of the circumstances, "'the government obtained the statement by physical or psychological coercion or by improper inducement so that the suspect's will was overborne.'" *United States v. Harrison*, 34 F.3d 886, 890 (9th Cir. 1994) (quoting *United States v. Leon Guerrero*, 847 F.2d 1363, 1366 (9th Cir. 1988)). Evidence of coercive police activity rendering a confession involuntary includes physical threats of harm, deprivation of food or sleep, lengthy questioning, and psychological persuasion. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 236 (1995).

2. *Discussion*

There is no indication that the police used coercive interrogation techniques to extract an involuntary statement from Defendant during the May 12, 2008 interview. First, Defendant argues that he was held for a "substantial period of time." (Def.'s Mot. to Suppress at 1.) In opposition to this vague allegation, the Government submitted the Department of Public Safety's record of the interview indicating that the interview started at 8:45 p.m. on May 12, 2008 and ended at 8:55 p.m. on the same

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[1] The Fourteenth Amendment to the U.S. Constitution has been made applicable to the Commonwealth pursuant to the Covenant § 501(a). *In re "C.T.M.,"* 1 N.M.I. 410 (1990).

evening.[2] (Attachment to Govt.'s Response.) The only evidence concerning the length of the interview, therefore, indicates that the interview lasted approximately ten (10) minutes. Although lengthy questioning can be evidence of coercive police activity, a ten minute interview is not lengthy enough to be coercive.

Defendant also claims that English is not his first language, that his rights were not fully explained to him such that he could understand them, and that he felt threatened and intimidated by police. In *Commonwealth v. Mendiola*, the court held the test for reviewing a determination of voluntariness under 18 U.S.C. § 3501 is probably the same as the standard for reviewing a determination of voluntariness under a due process analysis. *Mendiola*, 976 F.2d at 484 (citing *United States v. Wilson*, 838 F.2d 1081, 1086 (9th Cir. 1988)). Accordingly, whether a defendant was advised or knew that he was not required to make a statement and that any statement made could be used against him is a factor to be considered in determining voluntariness. 18 USCS § 3501. The Department of Public Safety's report of the May 12, 2008 interview shows that the following exchange took place between Defendant and the police interviewer:

> Q: Do you fully understand your constitutional rights that I have just read and explained to you?
> A: Yes.
>
> Q: Do you have any questions about your rights?
> A: No.

(Attachment to Govt.'s Response.) The report also indicates that Defendant attended high school in New Mexico, that he is a Reservist with the U.S. Army, and that he answered the interview questions in a manner reflecting that he understands and speaks English fluently. (*Id.*) Thus, the evidence before

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[2] At oral argument, defense counsel objected to the Court's consideration of the Department of Public Safety's record of the May 12, 2008 interview for lack of foundation. Although the Government neglected to lay a foundation for this record, the record is nevertheless the only evidence submitted by either party and the Court is not inclined to simply ignore it. As to defense counsel's objection, the Court notes that it is not bound by the Commonwealth Rules of Evidence in addressing preliminary questions concerning the admissibility of evidence, except with regard to issues of privilege. Commonwealth Rules of Evidence 104(a) and 1101(c)(1); *see also United States v. Matlock*, 415 U.S. 164, 172-75 (1974) ("That the same rules of evidence governing criminal jury trials are not generally thought to govern hearings before a judge to determine evidentiary questions was confirmed on November 20, 1972, when the Court transmitted to Congress the proposed Federal Rules of Evidence.") (Analyzing the Federal Rules of Evidence after which the Commonwealth Rules are modeled). Accordingly, the Court exercises its discretion in choosing to consider the report for purposes of ruling on the instant motion.

the Court suggests that Defendant spoke and understood English and his rights were explained to him such that he understood those rights.

Finally, Defendant claims that he is of limited education and that his low level of intelligence should be considered in the Court's voluntariness determination. Where the record contains no evidence of physical or psychological coercion by police, however, a defendant's mental incapacity is irrelevant regarding the voluntariness issue. *United States v. Chischilly*, 30 F.3d 1144, 1151 (9th Cir. 1994) (although defendant had an I.Q. of 62, functional level of a 6-year old, and organic brain syndrome, because police used no physical or psychological coercion, defendant's mental capacity was irrelevant as to voluntariness), *cert. denied*, 513 U.S. 1132 (1995); *see also Henry v. Kernan*, 197 F.3d 1021, 1028 (9th Cir. 1999) (defendant's confession was involuntary "[b]ecause the police tactics and trickery produced a confession which was neither rational nor the product of an essentially free and unconstrained choice"), *cert. denied*, 528 U.S. 1198 (2000).[3] Here, because there is no indication of police coercion, the Court does not consider Defendant's level of intelligence. Given the totality of the circumstances, the preponderance of the evidence indicates that Defendant's statement was not the result of police coercion and that it was given voluntarily.

B. *Waiver of Defendant's Miranda Rights*

1. *Standard*

In *Miranda v. Arizona,* the U. S. Supreme Court held that a state may not use a defendant's statement made during a custodial interrogation against the defendant unless, before being questioned, the defendant was made aware of certain critical 5th Amendment rights. *Miranda*, 384 U.S. at 467. The Court found that to safeguard these rights, the interrogator must inform the defendant of his or her (1) right to remain silent, (2) right to have an attorney present during interrogation, and if the defendant is indigent, his or her right to have a lawyer appointed free of charge, and (3) that anything revealed can and will be used against the defendant in court. *Id.* at 473-74. The purpose is to protect suspects within

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[3] Where CNMI case law has not addressed an issue of law, the Court applies "the rules of common law, as expressed in the restatements of law . . . [and] as generally understood and applied in the United States . . . ." 7 CMC § 3401; *Ito v. Macro Energy, Inc.*, 4 N.M.I. 46, 55 (1993).

the coercive atmosphere of the police station. *Id.* at 478-79. If, at any stage of the interrogation, the defendant or accused indicates he or she wishes to consult with an attorney, the questioning must stop immediately. *Id.* at 444-45. The safeguards set forth in *Miranda* have been adopted into the jurisprudence of the Commonwealth. *See generally Commonwealth v. Cabrera,* 4 N.M.I. 240, 244 (1995); *Ramagmau,* 4 N.M.I. at 235 (1995); *Commonwealth v. Yan,* 4 N.M.I. 334, 337 (1996).

The prophylactic safeguards in *Miranda* prevent the government from introducing statements procured without its protections. *Yan,* 4 N.M.I. at 338 (1996). Because *Miranda's* safeguards only attach when defendants are the subject of *custodial interrogations,* specific tests have evolved to determine whether a defendant or accused is in custody and whether they are the subject of an interrogation. The test to determine whether a person is in custody is objective and asks whether a reasonable person in the defendant's position would believe he or she was in police custody to the degree associated with formal arrest. *Ramagmau,* 4 N.M.I. at 235. The test to determine whether there was an interrogation is also objective and asks whether a reasonable officer should know the question or statement is likely to elicit an incriminating response. *Yan,* 4 N.M.I. at 338. A *Miranda* violation occurs whenever a defendant is subjected to custodial interrogation without being advised of these rights, or when a waiver of rights is invalidly obtained.

If the government wishes to use a statement given after a defendant is apprised of his or her *Miranda* rights, the government must establish by a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily waived his or her rights. *Miranda*, 384 U.S. at 475; *Connelly*, 479 U.S. at 168. The determination is made by considering the totality of the circumstances surrounding the waiver or interrogation to determine whether the accused knowingly and voluntarily chose to forego his or her rights. *Miranda*, 384 U.S. at 475-77. In order for a waiver to be knowing and intelligent requires an inquiry into whether the waiver was made with "full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Colorado v. Spring*, 479 U.S. 564, 573 (1987). A voluntary waiver must be free from coercion or intimidation and must be the product of free choice. *Id.*

A. *Discussion*

1. *Defendant was Subjected to a Custodial Interrogation.*

Defendant's claim that he was subjected to a custodial interrogation is not disputed. Nevertheless, the Court notes that Defendant makes seemingly contradictory statements concerning whether he was under arrest during his interview. In paragraph 1 of his motion, Defendant alleges that D.P.S. detectives took a statement from him while he was under arrest and in D.P.S. custody. (Def.'s Mot. to Suppress Statement ¶ 1.) In paragraph 6, however, Defendant asserts that he was not advised that he was under arrest, but that "a reasonable person in his position would have believed that he was either under arrest or his freedom of action was restricted in a significant way." (*Id.* ¶ 6.) It appears, therefore, that Defendant's statement in paragraph 1 is only based on his subjective belief that he was under arrest. Normally, under such circumstances, the Court would need to determine whether a reasonable person would have had that same belief in order to determine whether there was a custodial interrogation. Other than alleging that the interview took place "in D.P.S. custody" and that it was conducted for "a substantial period of time," however, Defendant neglected to allege any facts as the basis for his belief. In fact, neither party has explained why the interview took place two days after the alleged crimes, if Defendant showed up for the interview voluntarily, if was picked up by police, whether he was placed in handcuffs, a police vehicle or a locked room, how many officers were present, if Defendant was alone, or other facts courts use to determine whether a defendant was in custody. The Government, however, does not refute that Defendant was subjected to a custodial interrogation.

2. *Defendant Knowingly, Intelligently, and Voluntarily Waived His Fifth Amendment Rights.*

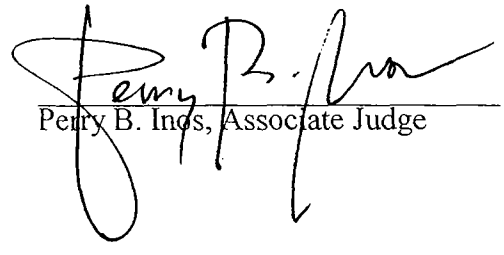
Defendant waived his Fifth Amendment rights pursuant to *Miranda* before making his statement to police. The Court's inquiry into whether Defendant knowingly, intelligently and voluntarily waived his Fifth Amendment rights is distinct from whether he made his statement to police voluntarily. Defendant's arguments, however, greatly overlap. Essentially, Defendant argues that his waiver was not knowing and intelligent because no attempt was made to ensure that he understood his rights. (Def.'s Mot. to Suppress Statement at 3.) As discussed with regard to Defendant's due process argument, the Department of Public Safety's interview report indicates that Defendant told the interviewer that he understood his rights and did not have any questions. After being made aware of

his rights, Defendant answered the interviewer's questions and did not invoke his rights. Although the Government must prove that the defendant was aware of his or her rights and waived them, "[t]o solicit a waiver of *Miranda* rights, a police officer need neither use a waiver form nor ask explicitly whether the defendant intends to waive his rights." *United States v. Cazares*, 121 F.3d 1241, 1244 (9 th Cir. 1997) (citation omitted). "A valid waiver of *Miranda* rights depends upon the 'totality of the circumstances including the background, experience, and conduct of the defendant.'" *United States v. Garibay*, 143 F.3d 534, 536 (9th Cir. 1998) (citation omitted). In this case, the only evidence presented to the Court indicates that Defendant was made aware of his rights, he acknowledged that he understood his rights, and then he decided to make a statement to police without exercising his rights. Lastly, Defendant also asserts that his waiver was not voluntary, although he provides no basis for this conclusion beyond what we have already discussed with regard to Defendant's due process argument. (Def.'s Mot. to Suppress Statement at 3.) The preponderance of the evidence, in fact the only evidence, therefore indicates that Defendant knowingly, intelligently and voluntarily waived his Fifth Amendment rights pursuant to *Miranda*.

III. CONCLUSION

For the foregoing reasons, the Court hereby DENIES Defendant's motion to suppress his statement.

So ORDERED this 2nd day of September, 2009.



Perry B. Ings, Associate Judge