FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. ALLAN TAITANO, Defendant.	CRIMINAL CASE NO. 13-111(E) **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS STATEMENT**

INTRODUCTION

THIS MATTER came before the Court on September 3, 2014, and continued to September 4, 2014, on Defendant's June 27, 2014 Motion to Suppress Statement. Defendant was represented by Public Defender Douglas Hartig and Deputy Public Defender Eden Schwartz, and the Commonwealth was represented by Assistant Attorney General Margo Badawy, who was also assisted by Assistant Attorney General Bobbie Cepeda.

OAG
PDO

Based on the following reasons and upon the Court's review of both the written submissions of each party, the oral arguments made during the hearing, and the Court's finding of the credibility of each of the witnesses presented, the Court hereby **DENIES** Defendant's Motion to Suppress.

BACKGROUND

The instant motion arises out of statements the Defendant made to law enforcement officers during the investigation of an alleged attempted sexual assault which occurred just hours before their encounter with the Defendant.

On June 27, 2014, Defendant moved this Court to suppress statements made in response to police questioning during an encounter which occurred outside his home, as well as any statements made inside the police car following his arrest and removal from the scene. (Def.'s Mot., at 3.) Defendant claims these statements should be suppressed due to law enforcement's failure to warn Defendant of his Miranda rights prior to questioning and because they were not produced following a knowing, voluntary, and intelligent waiver, respectively. (*Id.*)

On August 29, 2014, the Commonwealth opposed Defendant's Motion to Suppress, arguing that anything Defendant stated before his arrest is admissible because he volunteered any statements and was not interrogated before his arrest, and that once he was formally arrested, Defendant intelligently, knowingly, and voluntarily waived his rights under *Miranda*. (CNMI's Opp., at 7.)

At the hearing in court on September 3 and 4, 2014, Defendant also argued that the government has not met their burden of demonstrating the adequacy of the Miranda warnings given pursuant to both *Duckworth v. Eagan*, 492 U.S. 195 (1989) and 6 CMC § 6015, which provide certain rights that must be read to a defendant after his or her arrest. It is worth noting that since these arguments were not contained in Defendant's Motion, the Commonwealth was not put on notice, claiming they were unable to properly prepare for and respond to those arguments in kind. The Commonwealth nonetheless argued that, in response to the Miranda warnings read to Defendant at the scene of his arrest, Defendant nodded and responded "yes," and that Defendant provided a written waiver less than twelve hours later.

LEGAL STANDARD

A defendant is in custody when he is "formally arrested" or otherwise deprived of his "freedom of action in any significant way." *Commonwealth v. Mattao*, 2008 MP 7 ¶ 17 (citing *Orozco v. Texas*, 394 U.S. 324, 327 (1969)). In order to determine whether a suspect is in custody, a court evaluates "whether a reasonable person in the Defendant's position would believe he or she was in police custody of the degree associated with a formal arrest"— that is, whether the scene is police dominated. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 235 (1995) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).

The Court first considers the totality of the circumstances surrounding the interrogation, evaluating whether a reasonable person would have felt at liberty to leave or otherwise interrogate the interrogation. *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2402 (2011). Once a suspect is in custody, *Miranda* warnings must be given prior to any interrogation. *United States v. Estrada-Lucas*, 651 F.2d 1261, 1265 (9th Cir. 1980). Interrogation means express questioning, and any words or actions on the part of law enforcement that they should know are reasonably likely to elicit an incriminating response from the suspect. *Rhode Island v. Innis*, 446 U.S. 289, 301 (1980). Prior to questioning, the police must reasonably convey a suspect's rights as required by *Miranda*. *Duckworth v. Eagan*, 492 U.S. at 203.

The government may not use statements that stem from a custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Accordingly, the prosecution bears the burden of demonstrating that adequate warnings were given and waived by at least a preponderance of the evidence. *United States v. Gonzalez*, 719 F. Supp. 2d 167, 171 (D. Mass. 2010) (citing *Moran v. Burbine*, 475 U.S. 412, 421 (1986)); *Colorado v. Connelly*, 479 U.S. 157, 168-69 (1986).

DISCUSSION

The Court will evaluate each aspect of Defendant's Motion to Suppress in turn, beginning with whether asking Defendant to place his hands on his own car constitutes a custodial arrest, and ending with whether the rights read to Defendant were adequate under *Miranda* and if his waiver could be considered to be knowing, voluntary, and intelligent.

I. DEFENDANT VOLUNTEERED STATEMENTS WERE NOT FRUITS OF INTERROGATION

First, the Court recognizes that Defendant volunteered statements before being taken into custody, and thus finds that statement to be admissible as evidence at trial. The U.S. Supreme Court in *Miranda v. Arizona* stated that: "[a]ny statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. . . . Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today."

384 U.S., at 478. The U.S. Supreme Court reiterated this in *United States v. Patane*, 542 U.S. 630 (2004), holding that failure to Mirandize a suspect does not require suppression of physical fruits of the suspect's voluntary statements if the suspect freely gives the statements without interrogation or coercion. Similarly, absent interrogation, post-*Miranda* decisions have consistently held that volunteered or spontaneous statements made by suspects who were plainly in custody and had not been given the Miranda warnings are admissible. *See People v. Kaye*, 25 N.Y.2d 139, 144 (Ct. of App. N.Y., 1969) (quoting generally, *Pitman v. United States*, 380 F. 2d 368, 370 (9th Cir. 1967); *United States v. Cruz*, 265 F. Supp. 15, 20 (W. D., Texas, 1967); *Spurlin v. State*, 218 So. 2d 876, 878 (Miss., 1969); *People v. Charles*, 66 Cal. 2d 330 (Cal. Sup. Ct., 1967); *Bivens v. State*, 242 Ark. 362 (1967)). Lastly, volunteered or spontaneous statements are admissible even if the defendant is in custody, before being Mirandized. *United States v. Mauleon*, 5 Fed. Appx. 782, 784 (9th Cir. 2001) (citing *United States v. Sherwood*, 98 F.3d 402, 409 (9th Cir. 1996)); *United States v. Allen*, 699 F.2d 453, 459-60 (9th Cir. 1982).

Here, as no custodial arrest had taken place at that point, and no questions had been asked by law enforcement officers, the Fifth Amendment does not operate to attach the right to counsel and require the suppression of statements volunteered by the Defendant. Accordingly, the Court finds that Defendant's statement made before being asked to put his hands on his vehicle is admissible, and the Court denies the suppression of that statement as requested by Defendant.

II. DEFENDANT WAS UNDER INVESTIGATIVE DETENTION, NOT CUSTODIAL ARREST

Second, the Court evaluates whether asking Defendant to place his hands on his own vehicle constitutes a formal custodial arrest so as to trigger the necessity of *Miranda* warnings before questioning Defendant.

After the seminal Fourth Amendment case of *Terry v. Ohio*, 392 U.S. 1 (1968), which gave law enforcement the authority to make a brief investigative detention, subsequent decisions have clarified that ruling. Specifically, "a police officer who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke

suspicion." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975)). Further, such a "stop and inquiry must be reasonably related in scope to the justification for their initiation," and the detaining officer "may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." *Id.*

Furthermore, the Commonwealth's own statutes provide authority for the police to stop a person on a temporary basis, under substantially the same standards as envisioned by *Terry* and its progeny. 6 CMC § 6103(d) provides that "[an a]rrest without a warrant is authorized in the following situations: (d) Police officers, even in cases where it is not certain that a criminal offense has been committed, may, without a warrant, temporarily detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. It is clear that the Commonwealth's legislature intended to extend the rules governing investigative stops under *Terry* to this jurisdiction, and that such a detention is for the explicit purposes of furthering investigation into an alleged crime or the reasonable suspicion that one has been committed.

Here, the law enforcement officers arrived at the Defendant's house just hours after an alleged sexual assault had been committed, learning the location of the Defendant's residence from the victim and his family and confirming it by identifying Defendant's vehicle which was parked outside the residence. A woman standing outside called for the Defendant upon seeing the law enforcement officers, and Defendant subsequently emerged from his house. Officer Wabol testified that he asked the man that emerged from the house if he was Allan Taitano, the primary suspect in the investigation of the alleged sexual assault, to which the Defendant answered "yes." The officers at the scene both testified that they never touched the Defendant, and that they addressed him in a normal tone of voice further than an arms-reach away. Officer Wabol subsequently asked Defendant to place his hands on his vehicle, so that they could see them for their own safety. It was not until after the victim arrived and gave a positive I.D. that the Defendant was placed under formal arrest and read his Miranda rights.

Defendant cites *United States v. Coley*, 974 F. Supp. 41 (D.C. Dist. 1997) as support for the argument that law enforcement asking Defendant to place his hands on a vehicle constitutes a formal custodial arrest. However, *Coley* is distinguishable from this case for a few important reasons. In *Coley*, the officer approached a car after a traffic stop and asked defendant for his vehicle registration. 974 F. Supp. at 43. Defendant failed to produce his registration, telling the officer that the tags on the car were issued for his brother's Toyota, at which time the officer asked defendant to step out of the car, intending "to place him under arrest for operating an unregistered vehicle." *Id.* The officer told defendant to put his hands on the car and, as he began to search him, asked defendant whether he had any weapons or drugs on his person, to which the defendant responded by nodding his head toward the trunk of the car and saying that he and his passenger had just come from the pistol range in Maryland. *Id.* At that point, the officer stepped defendant to the rear of the car, handcuffed him, and searched the car. *Id.*

The court in *Coley* cited *United States v. Clark*, 306 U.S. App. D.C. 293, 24 F.3d 299 (D.C. Cir. 1994), in which the Court of Appeals found that a Terry stop was still a Terry stop, and not an arrest, when the officer ordered the defendant out of his car at gunpoint, patted him around the waist to see if he was armed, and made him kneel at the rear of the car under the watchful eye of another policeman as the arresting officer searched the vehicle for weapons. In *Clark*, the Court of Appeals concluded that the "use of force did not convert the stop into arrest" and that defendant "voluntarily informed [the officer] that there were drugs under the front seat of the car . . . ." 24 F.3d at 304.

In *Coley*, however, the arresting officer was not, according to his candid testimony, in any fear of his personal safety or under any suspicion of the existence of guns or drugs on the person or in the custody of the defendant. The *Coley* court stated that this "removes the Terry umbrella . . . and makes analysis of the Miranda issue necessary," ultimately holding that "[a] reasonable person in defendant's position would have believed that he was in custody when [the officer] directed him to place his hands on the car and began to pat him down. *Coley*, 974 F. Supp. at 45.

Here, however, there is no evidence that the actions of the law enforcement officers on the scene rose to the level of complete domination employed in *Coley* or *Clark*. Defendant was not held

at gun point, patted down for weapons, or made to kneel until the victim arrived to identify him as the suspect. The law enforcement officers simply asked Defendant to place his hands on his own vehicle on his own property, due to the fact they had information that he had been drinking earlier and may be intoxicated, which upon testimony by the officers, increases the risk to the officers involved due to the possibility of the suspect becoming "belligerent." The officers on the scene never touched the Defendant, and used absolutely no force or threat of force in the encounter up until the victim arrived to identify him as the suspect in the alleged sexual assault, and the officers decided to place him under formal arrest at that time.

Furthermore, the fact that the officers testified that if Defendant would have fled, they would have chased him is superfluous, as any law enforcement officer would be under a duty to chase down, and likely arrest, any suspect or person that fled from investigative detention due to reasonable suspicion that they committed a crime. To allow the primary suspect of an investigation into an alleged sexual assault to flee the scene after positively identifying him using his truck and his own admission would be nothing short of police misconduct, as well as posing a potential danger to the public, including the victim.

Thus, the Court finds that the conduct of the law enforcement officers at the scene did not constitute a formal custodial arrest as envisioned by applicable case law simply because they asked Defendant to place his hands on his vehicle, and the *Miranda* analysis – which requires both prongs of "custodial interrogation" – necessarily ends here. Thus, the Court hereby denies Defendant's motion to suppress statements made before his formal arrest, finding that they were volunteered while out of police custody, thus complying with the need for procedural safeguards to protect the constitutional right against self-incrimination.

III. *MIRANDA* WARNINGS GIVEN TO DEFENDANT WERE ADEQUATE

Lastly, the Court evaluates whether the *Miranda* warnings given to Defendant were adequate under the Fifth Amendment, applicable case law, and relevant local statutes, such that any information or statements elicited from the Defendant after his arrest should be suppressed.

In *Miranda*, the U.S. Supreme Court established now-familiar procedural safeguards that

require law enforcement to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation — specifically, the suspect must be told that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." 384 U.S. at 479. Further, the Court in *Miranda* "presumed that interrogation in certain custodial circumstances is inherently coercive and . . . that statements made under those circumstances are inadmissible unless the suspect is specifically warned of his Miranda rights and freely decides to forgo those rights." *New York v. Quarles*, 467 U.S. 649, 654 (1984) (footnote omitted).

However, the Supreme Court subsequently stated that "the 'rigidity' of Miranda [does not] extend to the precise formulation of the warnings given a criminal defendant," further providing that there is "no talismanic incantation required to satisfy its strictures." *California v. Prysock*, 453 U.S. 355, 359 (1981) (per curiam). Thus, a court reviewing warnings given to a defendant "need not examine [them] as if construing a will or defining the terms of an easement." *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989). The court must only review warnings to ensure they "reasonably convey his rights as required by Miranda." *Prysock*, 453 U.S. at 361. It is also worth noting that the Supreme Court has also commented that *Miranda* warnings are "not themselves rights protected by the Constitution but instead measures to insure that the right against compulsory self-incrimination [is] protected." *Michigan v. Tucker*, 417 U.S. 433, 444 (1974).

Finally, Defendant cites 6 CMC § 6105 as providing even greater strictures on what must be read to a suspect after they are arrested under suspicion of a felony. Specifically, 6 CMC § 6105(b)(2) provides that any person arrested shall be advised "[t]hat the police will, if the individual so requests, endeavor to call counsel to the place of detention and allow the individual to confer with counsel there before the person is questioned further, and allow the person to have counsel present while being questioned by the police if so desired." Further, 6 CMC § 6105(b)(3) provides that "the services of the public defender are available for these purposes without charge." The Court refuses to read these requirements as being broader than what is required by *Miranda* and its progeny, and

interprets the statute to require the police to advise the Defendant that he has the constitutionally guaranteed right to have counsel present at all times, and that if he cannot afford one, one will be appointed to him at no cost.

Here, the Commonwealth has presented ample evidence by way of sworn statements and testimony that the arresting officers properly advised Defendant of his rights following his formal arrest, including his "right to remain silent" and his "right to counsel," and that "if he could not afford one the Court will appoint one for him." Following these verbal warnings, the Defendant responded "yes," that he understood, and the officers proceeded to question Defendant while in the police vehicle. Thus, the Court finds that the Commonwealth has provided, by a preponderance of the evidence, that these verbal warnings meet the threshold envisioned by *Miranda* and the cases that have followed it.

Moreover, less than twelve hours later, Defendant again waived his rights in writing during a meeting with detectives at the Department of Corrections, who showed him a "Constitutional Rights Form." This form, marked as Commonwealth's Exhibit 1, contains everything required by *Miranda* and its progeny, as well as the applicable local statutes. In fact, the form specifically provides warnings that go beyond what is ordinarily required by *Miranda*, and which complies with the applicable local statutes. Item 6 on the form reads "You have the right to consult with a lawyer before questioning and to have a lawyer present with you while you are being questioned. You may stop talking to me at any time and demand a lawyer at any time." Thus, the Court finds that the Commonwealth has provided, by a preponderance of the evidence, that these written warnings meet the threshold envisioned by *Miranda* and the cases that have followed it.

Therefore, the Court finds that the Commonwealth successfully shouldered their burden to prove that the *Miranda* warnings given to Defendant were adequate under statute and case law.

IV. DEFENDANT'S WAIVERS WERE KNOWING, INTELLIGENT, AND VOLUNTARY

Lastly, the Commonwealth bears the burden of establishing that a defendant "intelligently, knowingly, and voluntarily waived his or her procedural due process rights." *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 8. Finally, the determination of a valid waiver of one's rights under Miranda

depends upon the totality of the circumstances. *Ramangmau*, 4 N.M.I. at 235.

Here, Defendant answered "yes" that he understood his rights when they were read to him by the arresting officer, and proceeded to speak with the officers in the police vehicle on the way to the Department of Corrections. Then, later at the Department of Corrections, he was read and signed a form which enumerated all of his constitutional rights, printing "Yes" and signing his initials next to each item and finally signing his name at the bottom of the form. Specifically, item 9 on the Constitutional Rights form provides a question asking: "Knowing these rights, do you want to talk to me without having a lawyer present?", to which the Defendant printed "Yes" and signed his initials. Defendant thereafter agreed to speak with officers and detectives regarding the alleged sexual assault case, outside the presence of an attorney.

Further, there is no evidence the police officers or detectives involved coerced Defendant into waiving his right to have counsel present during questioning, as well as affirmative evidence that the initial warnings given to Defendant satisfied the strictures of adequacy as provided by *Miranda*. There is also no evidence that suggests the Defendant did not understand his rights as they were read to him, or that he was under the influence of drugs or alcohol when he made his waiver.

Accordingly, as Defendant agreed to speak with officers and detectives on two separate occasions after voluntarily waiving his procedural due process rights – both after his formal arrest and subsequent *Miranda* warnings, and after reading and signing the "Constitutional Rights Form" – the Court finds that the Defendant knowingly, intelligently, and voluntarily waived his procedural due process rights.

CONCLUSION

For the foregoing reasons, the Court **HEREBY DENIES** Defendant's Motion to Suppress Statements made before and after his arrest.

IT IS SO ORDERED this 8th day of September, 2014.

David A. Wiseman, Associate Judge