

1 **FOR PUBLICATION**

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3 **IN THE SUPERIOR COURT**
4 **FOR THE**
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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5 **COMMONWEALTH OF THE**
6 **NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

8 **GEORGE AYUYU BARCINAS**

Defendant.

) **CRIM. CASE NO. 15-0206**

) **ORDER GRANTING DEFENDANT'S**
) **MOTION TO SUPPRESS STATEMENTS**
) **AS AN IMPROPER TWO-STEP**
) **INTERROGATION WAS USED TO**
) **CIRCUMVENT *MIRANDA* IN**
) **VIOLATION OF *MISSOURI v. SEIBERT***

13 **I. INTRODUCTION**

14 This matter came before the Court on October 7, 2016 in the Rota Courthouse on the
15 Defendant's Motion to Suppress Statements. The Defendant, George Ayuyu Barcinas, was present
16 and represented by Attorney Joaquin Torres. The Commonwealth was represented by Assistant
17 Attorney General Shannon Foley.

18 On September 22, 2016, the Defendant filed his Motion to Suppress Statements.¹ The
19 Defendant argues that his statements made to two Rota Department of Public Safety ("DPS")

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24 ¹ The Motion to Suppress Statements was filed by Assistant Public Defender Tillman Clark, who was the Defendant's attorney at the time. The Defendant later retained Attorney Joaquin Torres as his attorney, and Mr. Torres filed his substitution of counsel on October 6, 2016.

1 officers on the night of June 5, 2015 must be suppressed pursuant to *Missouri v. Seibert*,² since only
2 the second of the two officers provided the Defendant with *Miranda* warnings.³

3 The Commonwealth filed its opposition on October 3, 2016. The Defendant did not file a
4 reply.

5 Based on a review of the filings, oral arguments, and applicable law, the Court **GRANTS**
6 the Defendant's motion to suppress both statements.

7 **II. BACKGROUND**

8 The Defendant seeks the suppression of all statements made by the Defendant to Rota
9 Department of Public Safety ("DPS") officers on the night of Friday, June 5, 2015. That night, the
10 Defendant was interviewed by two officers: first by Police Sergeant Noel Calvo ("Sgt. Calvo"), and
11 second by Detective Shaw Taisacan ("Det. Taisacan"). The Defendant argues that both statements
12 must be suppressed, since the Defendant was only given *Miranda* warnings by Det. Taisacan, the
13 second officer that he made a statement to. At the October 7, 2016 hearing, the Court heard
14 testimony from Sgt. Calvo and Det. Taisacan. Both officers discussed the events of the night of
15 Friday, June 5, 2015. The Court now makes the following factual findings.

16 On June 5, 2015, Officer Joseph Quitugua Camacho and Sgt. Calvo responded to a 911 call
17 regarding an alleged incident of domestic violence at the Defendant's residence on the island of
18 Rota. The Defendant and the alleged victim, Desiree Pendergrass,⁴ were married at the time of the
19 alleged incident. The Defendant works as a police officer for Rota DPS.

21 ² *Missouri v. Seibert* seeks to prevent the practice of circumventing *Miranda* protections by questioning a suspect
22 without proper *Miranda* warnings, subsequently giving warnings, and then resuming questioning and covering the same
ground as in the first interrogation. 542 U.S. 600, 611-14 (2004) (Souter, J., plurality opinion).

23 ³ Under *Miranda v. Arizona*, "the prosecution may not use statements, whether exculpatory or inculpatory, stemming
from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure
the privilege against self-incrimination." 384 U.S. 436, 444 (1966).

24 ⁴ Ms. Pendergrass is also known as: "Desiree Barcinas," "Desiree Pendergrass," and "Daisy Pendergrass." These names
all refer to the same person, the alleged victim in this case.

1 Officer Camacho and Sgt. Calvo responded to the 911 call in separate vehicles. Officer
2 Camacho stopped at the IT&E compound in Sinapalo I, where the Defendant’s vehicle was parked.
3 Sgt. Calvo testified that, when he pulled into the IT&E parking lot, he saw the Defendant get out of
4 Officer Camacho’s patrol vehicle. The Defendant was not wearing handcuffs, nor was he being
5 assisted by Officer Camacho. The Defendant got into the rear of Sgt. Calvo’s patrol vehicle and told
6 him, “Let’s go. Not my fault.” Sgt. Calvo testified that only on-duty police officers and arrested
7 individuals ride in patrol cars, and that arrested individuals sit in the back.

8 **A. The First Interview: Sgt. Calvo’s “Friendship Talk” with the Defendant**

9 Sgt. Calvo then drove the Defendant down to the Rota DPS station. Sgt. Calvo testified that
10 he did not place the Defendant under arrest. When they arrived at the DPS station, Sgt. Calvo took
11 the Defendant to his office. During this time, Sgt. Calvo did not see any other officers, and there
12 was no other officer in his patrol vehicle.

13 When they got to Sgt. Calvo’s office, sometime between 5:00 p.m. and 6:00 p.m., Sgt.
14 Calvo asked the Defendant, “What happened?” Sgt. Calvo did not advise the Defendant of his
15 *Miranda* rights. Sgt. Calvo and the Defendant discussed the incident for forty minutes to an hour.
16 Sgt. Calvo testified that he did not give a *Miranda* warning to the Defendant because he was only
17 trying to get a briefing of what happened, and that Sgt. Calvo never felt like he needed to advise the
18 Defendant of his rights. Sgt. Calvo also testified that, since he did not know the alleged victim’s
19 side of the story, he did not have any reason to make an arrest. Sgt. Calvo also testified that an
20 alleged incident of domestic violence is “not really a bad crime,” but that the couple was merely
21 having “issues.”⁵ The Defendant did not ask to leave Sgt. Calvo’s office.

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24 ⁵ The Court is concerned that a police officer responding to a 911 call regarding an alleged incident of domestic violence would treat the alleged incident as “not really a bad crime.” The Court takes this opportunity to impress upon all law enforcement officers their duty to enforce the law.

1 At some point early in the interview, Sgt. Calvo notified the Defendant that Det. Taisacan
2 would be coming to speak with him later. The Defendant was instructed to wait for Det. Taisacan,
3 meaning the Defendant could not leave the DPS station. Sgt. Calvo never left the Defendant's side
4 during his interview with the Defendant, or afterwards, while waiting for Det. Taisacan to arrive.
5 Sgt. Calvo and Det. Taisacan report to different supervisors at Rota DPS.

6 Sgt. Calvo testified that he and the Defendant have been good friends since elementary
7 school. Thus, Sgt. Calvo described the discussion between himself and the Defendant as "friendship
8 talk" about Desiree Pendergrass and the alleged incident. Sgt. Calvo also testified that it is not
9 typical DPS procedure to bring a suspect to the office, and that typically complaining witnesses are
10 interviewed in the field. Sgt. Calvo also testified that he did not think he needed to provide *Miranda*
11 warnings to the Defendant, and that Sgt. Calvo did not intentionally withhold *Miranda* warnings.
12 Sgt. Calvo did not tell the Defendant if he was free to leave, and Sgt. Calvo did not know if the
13 Defendant thought he was free to leave. When asked whether the Defendant could leave the DPS
14 station if the Defendant wanted to, Sgt. Calvo hesitated and answered, "Maybe." Sgt. Calvo also
15 testified that he did not treat the Defendant as a victim or a witness.

16 **B. The Second Interview: Det. Taisacan's Interrogation of the Defendant**

17 At around 9:00 p.m. that same night, about three hours after the Defendant was brought to
18 the DPS station, Det. Taisacan arrived at the DPS station. Det. Taisacan had been off-duty at the
19 time of the incident, but was instructed to investigate the case since the Defendant works for Rota
20 DPS. Earlier in the evening, Det. Taisacan interviewed Desiree Pendergrass. When he arrived at the
21 DPS station, Det. Taisacan reviewed the transmittals/log sheets regarding the alleged incident.
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1 Officer Camacho⁶ briefed Det. Taisacan on the case. Det. Taisacan asked Officer Camacho to bring
2 the Defendant to his office, and then asked both Officer Camacho and Sgt. Calvo to leave the room.

3 After transferring the Defendant to Det. Taisacan, Sgt. Calvo began to write a report about
4 what happened during his conversation with the Defendant. Sgt. Calvo did not write that he
5 discussed “friendship talk” with the Defendant. Sgt. Calvo wrote his report from memory, since he
6 was not taking notes while he was speaking with the Defendant.

7 Det. Taisacan testified that he neither met with Sgt. Calvo before beginning the interview,
8 nor asked the Defendant what he told Sgt. Calvo. Det. Taisacan testified that the first thing he did
9 while speaking with the Defendant was take out a constitutional rights form and go over it with the
10 Defendant. The Defendant initialed and signed the constitutional rights form. Then, Det. Taisacan
11 asked the Defendant, “What happened?”

12 III. DISCUSSION

13 The Defendant asks that the Court suppress both his first statement to Sgt. Calvo and his
14 second statement to Det. Taisacan. Since two statements are at issue, the Court will address these
15 two statements in turn.

16 A. Statements Made by the Defendant During the “Friendship Talk” with Sgt. Calvo

17 First, the Court will address the Defendant’s statement to Sgt. Calvo. If a defendant has not
18 been properly warned of his rights, “the prosecution may not use any statements, whether
19 exculpatory or inculpatory, stemming from custodial interrogation of the defendant.” *Miranda v.*
20 *Arizona*, 384 U.S. 436, 444 (1966). “Defendants are in ‘custody’ when they are formally arrested or
21 otherwise deprived of their freedom of action in any significant way.” *Commonwealth v. Mettao*,

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23 ⁶ Officer Camacho interviewed the alleged victim, Desiree Pendergrass. *See Commonwealth v. Barcinas*, Crim. No. 15-
24 0206 (Aug. 8, 2016) (Order Denying Defendant’s Motion to Dismiss for Destruction of Evidence as Defendant Failed
to Show that the Evidence was Destroyed in Bad Faith, and that the Evidence Possessed an Apparent Exculpatory
Nature Before It Was Destroyed, and that the Defendant Would be Unable to Obtain Comparable Evidence by Other
Reasonably Available Means).

1 2008 MP 7 ¶ 17 (2008). The prosecution bears the burden of showing that the requisite warnings
2 were given and subsequently waived. *Miranda*, 384 U.S. at 475. The prosecution must prove the
3 *Miranda* waiver “at least by a preponderance of the evidence.” *Seibert*, 542 U.S. at 609 (citing
4 *Colorado v. Connelly*, 479 U.S. 157, 169 (1986)).

5 Whether a defendant is in custody, and thus whether police must administer *Miranda*
6 warnings, depends on “whether a reasonable person in the defendant’s position would believe that
7 he or she was in police custody of the degree associated with a formal arrest.” *Commonwealth v.*
8 *Ramangmau*, 4 NMI 227, 235, 235 (1995) (quoting *California v. Beheler*, 463 U.S. 1121, 1125
9 (1983)). “[C]ustody must be determined by how a reasonable person in the suspect’s situation
10 would perceive his circumstances.” *Yarborough v. Alvarado*, 541 U.S. 652, 662 (2004). “The factor
11 of particular concern is whether the atmosphere was ‘police dominated.’” *Ramangmau*, 4 NMI at
12 235 (citing *State v. DesLaurier*, 646 A.2d 108, 111-12 (Conn. 1994)). Further, “the initial
13 determination of custody depends on the objective circumstances of the interrogation, not on the
14 subjective views harbored by either the interrogating officers or the person being questioned.” *Id.*
15 (quoting *Stanisbury v. California*, 511 U.S. 318, 323 (1994)).

16 Since determining whether a defendant is in custody is an objective inquiry, Courts do not
17 look to a defendant’s mindset, age, or experience with law enforcement in determining custody.
18 *Yarborough*, 541 U.S. at 667. Likewise, the “police officer’s subjective view that the individual
19 under questioning, if undisclosed, does not bear upon the question whether the individual is in
20 custody for purposes of *Miranda*.” *Stanisbury*, 511 U.S. at 324. “An officer’s knowledge or beliefs
21 may bear upon the custody issue if they are conveyed, by word or deed, to the individual being
22 questioned.” *Id.* at 325.

23 The objective circumstances of the interrogation can include: “the language used by the
24 officers, the physical characteristics of the place where the question occurs, the degree of pressure

1 applied to detain the individual, the duration of the detention, and the extent to which the person
2 was confronted with evidence of guilt.” *Butler*, 249 F.3d at 1099 (citing *United States v. Hudgens*,
3 798 F.2d 1234, 1236 (9th Cir. 1986)).

4 Station-house interviews are not automatically custodial. *Oregon v. Mathiason*, 429 U.S.
5 492, 495 (1977). In *Mathiason*, the defendant “came voluntarily to the police station, where he was
6 immediately informed that he was not under arrest. At the close of a half-hour interview [the
7 defendant] did in fact leave the police station without hindrance.” *Id.* Thus, the defendant in
8 *Mathiason* was not in custody for *Miranda* purposes.

9 In the present case, the Defendant voluntarily got into Sgt. Calvo’s patrol vehicle, he was
10 not handcuffed at any point during the evening, and he voluntarily went to the DPS station with Sgt.
11 Calvo. Despite this, the Court is convinced that a reasonable person in the Defendant’s situation
12 would not have felt free to leave. Sgt. Calvo questioned the Defendant in his office behind closed
13 doors for 40 minutes to an hour. Early in the interview, Sgt. Calvo informed the Defendant that Det.
14 Taisacan would be speaking with him later. Sgt. Calvo did not leave the Defendant’s side until Det.
15 Taisacan arrived to conduct his interview, hours later. Based on a preponderance of the evidence, a
16 reasonable person in the Defendant’s situation would believe that he was not free to leave. Since the
17 defendant was deprived of his freedom of action in a significant way, he was in custody for
18 purposes of *Miranda*.

19 Accordingly, the Defendant was subject to custodial interrogation while speaking with Sgt.
20 Calvo. According to Sgt. Calvo’s testimony, Sgt. Calvo did not advise the Defendant of his
21 *Miranda* rights. Therefore, the Defendant’s statements made to Sgt. Calvo are suppressed.⁷

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24 ⁷ The Court notes that the Commonwealth indicated that they “will not seek to admit the initial statement to Sgt. Calvo.” Opp. at 4.

1 **B. Statements Made by the Defendant During Det. Taisacan’s Interrogation**

2 Since the Defendant was in custody while he spoke with Sgt. Calvo, the Court must now
3 turn to whether his statements to Det. Taisacan must be suppressed. *Missouri v. Seibert* seeks to
4 prevent the practice of circumventing *Miranda*’s protections by questioning a suspect without
5 proper *Miranda* warnings, subsequently giving warnings, and then resuming questioning and
6 covering the same ground as in the first interrogation. *Seibert*, 542 U.S. at 611-14 (Souter, J.,
7 plurality opinion). The concern is that, “[u]pon hearing warnings only in the aftermath of
8 interrogation and just after making a confession, a suspect would hardly think that he had a genuine
9 right to remain silent, let alone persist in so believing once the police began to lead him over the
10 same ground again.” *Id.* at 613. If officers give *Miranda* warnings:

11 [I]n the midst of coordinated and continuing interrogation, they are likely to mislead
12 and ‘depriv[e] a defendant of knowledge essential to his ability to understand the
13 nature of his rights and the consequence of abandoning them.’ By the same token, it
14 would ordinarily be unrealistic to treat two spates of integrated and proximately
15 conducted questioning as independent interrogations subject to independent
16 evaluation simply because *Miranda* warnings formally punctuate them in the middle.

17 *Seibert*, 542 U.S. at 613-614 (quoting *Moran v. Burbine*, 475 U.S. 412, 424 (1986)).

18 Under *Seibert*, “unless the warnings could place a suspect who has been interrogated in a
19 position to make an informed choice, there could be no practical justification for accepting the
20 formal warnings as compliance with *Miranda*, or for treating the second stage of interrogation as
21 distinct from the first, unwarned and inadmissible segment.” *Id.* at 612. In *Seibert*, the United States
22 Supreme Court outlined a number of factors in considering whether a suspect was properly warned
23 if the *Miranda* warnings came mid-interrogation:

24 [T]he completeness and detail of the questions and answers in the first round of
interrogation, the overlapping content of the two statements, the timing and setting of
the first and the second, the continuity of police personnel, and the degree to which
the interrogator’s questions treated the second round as continuous with the first.

Seibert, 542 U.S. at 616.

1 In his concurrence in *Seibert*, Justice Kennedy “narrowed the *Seibert* exception to those
2 cases involving deliberate use of the two-step procedure to weaken *Miranda*’s protections.” *United*
3 *States v. Williams*, 435 F.3d 1148, 1157 (9th Cir. 2006).⁸ Post-warning statements are only
4 suppressed pursuant to *Seibert* where they are part of a “*deliberate* two-step interrogation where the
5 midstream *Miranda* warning—in light of the objective facts and circumstances—did not effectively
6 apprise the suspect of his rights.” *United States v. Williams*, 435 F.3d 1148, 1157 (9th Cir. 2006)
7 (discussing a split in the *Seibert* court where “the plurality would consider all two-stage
8 interrogations eligible for a *Seibert* inquiry,” while Justice Kennedy’s concurrence “narrowed the
9 *Seibert* exception to those cases involving deliberate use of the two-step procedure to weaken
10 *Miranda*’s protections,” ultimately holding that *Seibert* requires a deliberate two-step interrogation)
11 (citations omitted).

12 Under Justice Kennedy’s concurrence, “a postwarning statement must be suppressed if
13 interrogating officers deliberately use the two-step interrogation technique that was used in *Seibert*,
14 and if effective curative measures are not taken to ensure that the suspect genuinely understood the
15 *Miranda* warnings.” *Reyes v. Lewis*, 833 F.3d 1001, 1028 (9th Cir. 2016). Even if the subsequent
16 statement is voluntary, if insufficient curative measures were taken the subsequent statement must
17 be suppressed. *Id.* at 1029.

18 Curative steps “should be designed to ensure that a reasonable person in the suspect’s
19 situation would understand the import and effect of the *Miranda* warning and of the *Miranda*
20 waiver.” 542 U.S. at 661 (Kennedy, J., concurring). Curative steps could include, for instance, “a
21 substantial break in time and circumstances between the prewarning statement and the *Miranda*

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23 ⁸ In *Williams*, the Ninth Circuit held that it would apply *Seibert* in such a way that encompasses both the plurality
24 opinion as well as Justice Kennedy’s concurrence. *Williams*, 435 F.3d at 1157-58. “[W]hen a fragmented Court decides
a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be
viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” *Id.*
(quoting *Marks v. United States*, 430 U.S. 188, 193 (1977)).

1 warning...as it allows the accused to distinguish the two contexts and appreciate that the
2 interrogation has taken a new turn.” *Id.*

3 **1. The Officers Deliberately Employed a Two-Step Interrogation Procedure to**
4 **Circumvent *Miranda*’s Protections**

5 First, the Court will address whether the officers deliberately employed a two-step
6 interrogation process to circumvent *Miranda*’s protections. To determine whether a two-step
7 interrogation process was deliberately used to circumvent *Miranda*, courts “should review the
8 totality of the objective and subjective evidence surrounding the interrogations in order to
9 determine deliberateness, with a recognition that the inquiry will rely heavily, if not entirely, upon
10 objective evidence.” *United States v. Capers*, 627 F.3d 470, 479 (2d Cir. 2010). In determining
11 whether the officers deliberately sought to circumvent *Miranda*, the Court will “consider any
12 objective evidence or available expressions of subjective intent suggesting that the officer acted
13 deliberately to undermine and obscure the warning’s meaning and effect.” *Williams*, 435 F.3d at
14 1160. Objective evidence can include: “the timing, setting and completeness of the prewarning
15 interrogation, the continuity of police personnel and the overlapping content of the pre- and
16 postwarning statements.” *Id.* at 1159 (citing *United States v. Briones*, 390 F.3d 610, 614 (8th Cir.
17 2004)). Courts look to the totality of the circumstances in determining deliberateness. *United States*
18 *v. Nunez-Sanchez*, 478 F.3d 663, 668-69 (5th Cir. 2007); *United States v. Street*, 472 F.3d 1298,
19 1314 (11th Cir. 2006).

20 The prosecution bears the burden of disproving deliberateness. *Capers*, 627 F.3d at 479. The
21 *Capers* court noted that, although “the law generally frowns upon requiring a party to prove a
22 negative,” that the burden rests with the prosecution to prove the admissibility of a confession, and
23 thus the prosecution must show that the two-step interrogation was not deliberate. *Capers*, 627 F.3d
24 at 479. Whether a two-step procedure was deliberately employed is “dispositive of a defendant’s
challenge to the voluntariness of a confession garnered from a two-step interrogation procedure.”

1 *Id.* (citing *United States v. Stewart*, 539 F.3d 714, 719 (7th Cir. 2008)). Thus, the Commonwealth
2 bears the burden of establishing that Sgt. Calvo and Det. Taisacan did *not* deliberately employ a
3 two-step interrogation procedure to circumvent *Miranda*'s protections.

4 In *Capers*, the officer withheld *Miranda* warnings “not to undermine *Capers*' Fifth
5 Amendment rights, but rather to prevent the loss or concealment of evidence. *Capers*, 627 F.3d at
6 481. Although the officer's failure to provide a *Miranda* warning was improper, the *Capers* court
7 noted that “[i]nexperience, while not a legitimate excuse for postponing a *Miranda* warning,
8 nevertheless may save a confession from exclusion under *Seibert*.” *Id.* (citing *United States v.*
9 *Naranjo*, 426 F.3d 221, 232 (3d Cir. 2005). In *Capers*, the officer was experienced enough to know
10 better—likewise, Sgt. Calvo, who has been on the police force for thirteen years, and Det. Taisacan,
11 who has been on the police force for ten years, are both experienced officers. *Capers*, 627 F.3d at
12 481.

13 In *Capers*, the Second Circuit held that the government failed to establish that the defendant
14 was not subjected to a deliberate two-step interrogation. In examining whether the two-step
15 interrogation was followed, *Capers* followed the factors outlined in *Seibert*. *Capers*, 627 F.3d at
16 484. In *Seibert*, the United States Supreme Court outlined a number of factors in considering
17 whether a suspect was properly warned if the *Miranda* warnings came mid-interrogation:

18 [T]he completeness and detail of the questions and answers in the first round of
19 interrogation, the overlapping content of the two statements, the timing and setting of
20 the first and the second, the continuity of police personnel, and the degree to which
21 the interrogator's questions treated the second round as continuous with the first.

Seibert, 542 U.S. at 616.

22 In *Capers*, the overlap between the two statements, the continuing “inquisitorial
23 environment,” continuity in the officers present, and the officers engaging in “small talk” between
24 the interrogations to encourage him to tell the truth in the second interrogation all pointed to a

1 deliberate attempt to circumvent *Miranda*. *Capers*, 627 F.3d at 483-84. Based on the evidence
2 provided, the *Capers* court found that the government “has not produced sufficient objective
3 evidence to meet its burden to dispel the conclusion” that the officers had been deliberately
4 employing a two-step interrogation process to circumvent *Miranda*. *Id.*

5 In the present case, Sgt. Calvo was informed that Det. Taisacan was on his way to the DPS
6 station to interview the Defendant. Sgt. Calvo interrogated the Defendant, opening his questioning
7 with “What happened?” and proceeded to discuss the alleged incident at length with the Defendant.
8 Sgt. Calvo stayed by the Defendant’s side for several hours until Det. Taisacan arrived at the DPS
9 station to conduct the formal interrogation. While waiting for Det. Taisacan to arrive at the DPS
10 station, Sgt. Calvo could have simply left the Defendant in a room to wait. Instead of waiting for
11 Det. Taisacan, Sgt. Calvo sat with the Defendant and spoke about “friendship” with the Defendant.
12 Despite Sgt. Calvo’s claims that “friendship talk” was merely speaking as friends, Sgt. Calvo wrote
13 a police report about the contents of the “friendship talk” conversation. Further, Sgt. Calvo’s
14 “friendship talk” conversation stems directly from a 911 call regarding an alleged incident of
15 domestic violence, Sgt. Calvo picked up the Defendant while responding to that 911 call, and Sgt.
16 Calvo’s conversation with the Defendant focused on the alleged incident of domestic violence.

17 During the whole time the “friendship talk” conversation was happening, Sgt. Calvo
18 apparently knew that Det. Taisacan was on his way to interview the Defendant. Although Det.
19 Taisacan testified that he did not receive a briefing from Sgt. Calvo as to the contents of his
20 discussion with the Defendant, it is clear that the two officers were being coordinated by Rota DPS
21 as a part of the investigation of the alleged incident of domestic violence. Sgt. Calvo knew that Det.
22 Taisacan would be coming to the DPS station to question the Defendant, and Det. Taisacan had
23 been specifically tapped by his supervisor to investigate the case even though he was off-duty, since
24 the Defendant was also a Rota DPS officer. Sgt. Calvo and Det. Taisacan both opened their

1 interrogations with “What happened?” and they both discussed the alleged incident with the
2 Defendant. While speaking with Det. Taisacan, the Defendant covered the exact same incriminating
3 grounds he had already discussed with Sgt. Calvo.

4 Sgt. Calvo waited with the Defendant for several hours for Det. Taisacan to arrive. Sgt.
5 Calvo personally handed the Defendant over to Det. Taisacan for questioning, and then Sgt. Calvo
6 began to write his own police report about the alleged incident. The fact that Sgt. Calvo made his
7 own police report, despite only speaking with the Defendant as friends, points to coordination. Sgt.
8 Calvo’s report could function as a “back up” report of the Defendant’s statement in case the
9 Defendant later exercised his *Miranda* rights during his interview with Det. Taisacan. If Sgt.
10 Calvo’s discussion with the Defendant was solely “friendship talk,” there would be no need to write
11 a police report.

12 In *Capers*, the second interrogation was “essentially a cross-examination using information
13 gained during the first round of interrogation.” *Capers*, 627 F.3d at 484. Here, although the second
14 interrogation was not a cross-examination by the officer who had conducted the initial
15 interrogation, Det. Taisacan covered the exact same identical grounds as Sgt. Calvo. After having
16 the Defendant sign the constitutional rights form, Det. Taisacan asked the Defendant the exact same
17 question Sgt. Calvo asked him: “What happened?” The Defendant then proceeded to make a
18 statement to Det. Taisacan about the alleged incident, covering the same incriminating grounds
19 already covered by Sgt. Calvo.

20 Since the Commonwealth has the burden of establishing the admissibility of a confession,
21 the Commonwealth likewise bears the burden of disproving that law enforcement officers
22 deliberately employed an improper two-step interrogation process. *Capers*, 627 F.3d at 479. Based
23 on the circumstances surrounding Det. Taisacan’s interrogation, Det. Taisacan and Sgt. Calvo were
24 both being coordinated by Rota DPS. Based on the testimony provided, the Commonwealth has not

1 met its burden of disproving that law enforcement officers deliberately employed an improper two-
2 step interrogation process.

3 **2. Curative Measures Were Not Employed By the Officers**

4 Thus, the Court will now turn to whether any curative steps were taken to “ensure that a
5 reasonable person in the suspect’s situation would understand the import and effect of the *Miranda*
6 warning and of the *Miranda* waiver.” *Seibert*, 542 U.S. at 661 (Kennedy, J., concurring). Examples
7 of curative steps include: “a substantial break in time and circumstances between the prewarning
8 statement and the *Miranda* warning...as it allows the accused to distinguish the two contexts and
9 appreciate that the interrogation has taken a new turn.” *Id.* Based on the testimony provided, no
10 curative steps were taken by the officers. Nothing was said to the Defendant to make a reasonable
11 person in his situation believe that the two interrogations were distinct—instead, Sgt. Calvo stayed
12 by the Defendant’s side up until he personally handed the Defendant over to Det. Taisacan.

13 Based on the totality of the circumstances surrounding the two interviews conducted by Sgt.
14 Calvo and Det. Taisacan, the Court finds that Det. Taisacan’s *Miranda* warning was ineffective.
15 Det. Taisacan’s interview was tainted by Sgt. Calvo’s improper failure to *Mirandize* the Defendant.
16 Sgt. Calvo improperly interviewed the Defendant under the guise of a “friendship talk” without
17 administering *Miranda* warnings. Based on a totality of the circumstances, an improper two-step
18 interrogation process was employed, and the Commonwealth failed to meet its burden of disproving
19 the deliberateness of the two-step interrogation. Further, no curative measures were taken by the
20 officers to ensure a knowing and voluntary waiver of *Miranda*. Accordingly, the Defendant’s
21 statement to Det. Taisacan is suppressed.

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IV. CONCLUSION

Accordingly, the Defendant's motion to suppress is **GRANTED**. The Defendant's statements to Sgt. Calvo and Det. Taisacan are both suppressed.

IT IS SO ORDERED this 23rd day of November, 2016.



JOSEPH N. CAMACHO
Associate Judge