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SUPERIOR COURT
MARIANA ISLANDS

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

COMMONWEALTH OF THE NORTHERN) Criminal Case No. 93-163F(R)
MARIANA ISLANDS,

Plaintiff,)
) **DECISION AND ORDER ON**
) **DEFENDANT RICHARD SANTOS'**
) **MOTION TO SUPPRESS**

v.)
)

RICHARD SANTOS and)
DAVID SANTOS,)

Defendants.)
_____)

This matter came before the Court on September 1, 1994, on the motion of Defendant Richard Santos to suppress statements he made to an investigator of the Attorney General's office on August 25, 1993, on the grounds that Defendant did not receive *Miranda* warnings prior to the interview. The Government contends that Defendant was not in custody at the time of the interview, and that *Miranda* warnings were therefore not required.

I. FACTS

Defendant Richard Santos was charged with two counts of assault and battery and one count of aiding and abetting an assault with a dangerous weapon, in connection with events taking

1 place on August 2, 1993 on Rota. According to documents provided
2 by the Government, Investigator Curtis Hibdon interviewed
3 Defendant on August 25, 1993 at his workplace at the United States
4 Post Office on Rota. See Government Exh. A. At that time, the
5 Government claims that "Mr. Santos was informed he was not in
6 custody and did not have to talk to this investigator. Mr. Santos
7 agreed to talk to this investigator and an interview was
8 subsequently conducted with him." Id. Defendant seeks to
9 suppress statements allegedly made by him at this interview.

10 In his Reply Memorandum (at 3), counsel for Defendant asserts
11 that:

12 evidence at the hearing of this motion will indeed show
13 that a reasonable person in Defendant's position would
14 not feel free to leave the interrogation and restrictive
15 environment in which the statements were made.

16 However, at the September 1, 1994 hearing on this motion, no
17 evidence was presented. Defendant and the Government each
18 contended that the other party had the burden of producing
19 evidence as to whether Defendant was in custody at the time of the
20 interview. The Court took the issue under advisement.

21 **II. ANALYSIS**

22 The parties agree that Miranda warnings are required prior to
23 custodial interrogation. Commonwealth v. Aulerio, Crim. Case No.
24 93-155F (Super. Ct. Jan. 11, 1994). The determination of whether
25 a suspect is in custody turns on the perception of a reasonable
26 person in the suspect's position. Id., slip op. at 5, citing
27 Berkemer v. McCarty, 104 S.Ct. 3138, 3151 (1984).

28 The parties' dispute focuses on who bears the burden of
proving in this motion that Defendant was or was not in custody at

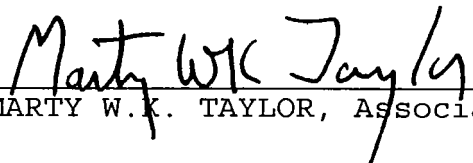
1 the time of the interview. The Government cites the correct rule:
2 the movant bears the burden of showing that the interrogation was
3 custodial, and therefore that Miranda warnings were required.
4 U.S. v. Charles, 738 F.2d 686, 692 (5th Cir. 1984); U.S. v. De La
5 Fuente, 548 F.2d 528, 533 (5th Cir. 1977); U.S. v. Goldberger, 837
6 F. Supp. 447, 454 n.4 (D.D.C. 1993). Once this showing is made,
7 the burden shifts to the Government to prove that the proper
8 Miranda warnings were administered. Id.

9 Here, Defendant has not met his burden of showing that the
10 August 25, 1993 interview with Investigator Hibdon was custodial.
11 Indeed, there is a complete failure of proof on this point. In
12 consequence, the Court has no basis on which to consider
13 Defendant's claims that a reasonable person would have considered
14 himself in custody at the time of the interview.

15
16 **IV. CONCLUSION**

17 For the foregoing reasons, Defendant's motion to suppress
18 statements allegedly made to Investigator Curtis Hibdon is DENIED.

19
20 So ORDERED this 22ND day of September, 1994.

21
22 
23 MARTY W.K. TAYLOR, Associate Judge