

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

COMMONWEALTH OF THE NORTHERN, MARIANA ISLANDS,)	Traffic Case No. 99-1118
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
CATHERINE BORJA PANGELINAN,)	
)	
Defendant.)	
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I. PROCEDURAL BACKGROUND

This matter came on for a bench trial on October 1, 1999, in Courtroom 223 at 9:00 a.m. Assistant Attorney General Elaine A. Paplos, Esq. appeared on behalf of the Commonwealth. Robert Naraja, Esq. appeared on behalf of the Defendant, Catherine Borja Pangelinan. The Court, having heard the arguments of counsel and having considered the evidence and the testimony of the witnesses, now renders its decision.

II. FACTS

Department of Public Safety (DPS) Officer Eric David testified that on February 14, 1999, he was dispatched to the scene of a two vehicle accident. Upon arriving at the scene, Officer David observed that one of the vehicles had sustained significant damage. Officer David then observed Defendant near one of the vehicles. Defendant's face was covered with blood from a scalp laceration [p. 2] and she was being attended to by an off-duty paramedic. Officer David approached Defendant and attempted to gain information regarding the vehicle collision. At this point Officer David observed a "very strong odor of alcohol" on Defendant's breath and that she was hysterical, uncooperative, and confused. Officer David inquired as to what had caused the collision and Defendant only replied, "I told my brother-in-law not to tint the car so much." Officer David then inquired as to whether Defendant had a driver's license in her possession. Defendant stated that her driver's license was in the vehicle, but Officer David was

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unable to find it. Paramedics arrived shortly thereafter and transported Defendant to the Commonwealth Health Center (CHC).

Defendant remained at CHC until early the next morning. While at CHC, Officer David attempted to gain more information regarding the accident, but Defendant remained uncooperative. Officer David testified that he continued to observe that Defendant had a “strong odor of alcohol” on her breath. Officer David then requested that Defendant submit to an alcohol blood test and informed her of the sanctions for refusing to submit to such a test by presenting her with the DPS implied consent form. Defendant did not sign the form and remained uncooperative. Defendant then requested that she be able to speak to another DPS officer. Officer David radioed DPS Sergeant Joaquin Salas and informed him of the uncooperative and confused nature of the Defendant. Sergeant Salas testified that when he arrived at CHC Defendant was still in a confused state and remained uncooperative.

Officer David then issued a citation to Defendant for alleged: (1) Driving Without a Driver’s License, in violation of 9 CMC § 2201; (2) Reckless Driving, in violation of 9 CMC § 7104; (3) Driving Under the Influence, in violation of 9 CMC § 7105; and (4) Refusal to Submit to an Alcohol Blood Test, in violation of 9 CMC § 7106.

No testimonial evidence was presented regarding the arrest of Defendant. The DPS implied consent form, however, shows that an arrest may have occurred at 11:49 p.m. on February 14, 1999. Also, no evidence was presented as to whether Defendant was informed of her constitutional rights prior or subsequent to any arrest. [p. 3]

III. ISSUE

1. Whether a conviction for Driving Under the Influence may be sustained where there was no evidence presented at trial as to whether Defendant was in fact arrested and informed of her constitutional rights.

IV. ANALYSIS

On October 1, 1999, this matter came before the Court for a bench trial. Ruling from the bench, the Court found that the Government presented sufficient evidence to find Defendant guilty as to the offense of Driving Without a Driver’s License, in violation of 9 CMC § 2201.

The Court also found, after considering the testimony and evidence presented, that the Government failed to present sufficient evidence to find Defendant guilty as to: Reckless Driving, in violation of 9 CMC § 7104 and Refusal to Take an Alcohol Blood Test, in violation of 9 CMC § 7106. The Court also alluded to the fact that there is sufficient evidence to find Defendant guilty of the offense of Driving Under the Influence, in violation of 9 CMC § 7105. The Court was concerned, however, with the fact that Defendant was never formally placed under arrest and took the matter under advisement.

In Commonwealth v. Palacios, this Court held that a Defendant may be convicted without a formal arrest provided that the testimony and evidence presented were obtained in a constitutionally permissible manner. Commonwealth v. Palacios, Traffic Case No. 98-6355 (Com. Sup. Ct. Jun. 28, 1999) (Order at 3).

In the case at hand, as in Palacios, there is no evidence that Officer David formally arrested the Defendant or informed her of her constitutional rights as set forth in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966). Miranda warnings must be given when a defendant is subject to police interrogation while in custody. Commonwealth v. Ramangmau, 4 N.M.I. 227, 235 (1995). To determine whether custody exists, a court must decide whether there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” Id. The test to be applied is whether a reasonable person in the defendant’s position would believe that he or she was in police custody of the degree associated with formal arrest. Id. The factor of particular concern is [p. 4] whether the atmosphere was “police dominated.” Id.

In the case at hand, Officer David approached Defendant after he observed that Defendant was near the scene of an accident and that her face was covered with blood. Officer David never attempted to restrain Defendant, but rather inquired as to what had occurred so that he might determine the cause of the collision. A reasonable person in Defendant’s position would not believe that he or she was in police custody of the degree associated with formal arrest or that the atmosphere was “police dominated.” Furthermore, “[g]eneral on-the-scene questioning . . . of citizens in the fact-finding process is not affected by [the Miranda] holding . . . [i]n such

situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.” State v. Szabo, 348 A.2d 588, 590 (Conn. 1974), citing Miranda v. Arizona, supra. As such, the Court finds that all statements and evidence gathered prior to the issuance of the citation are properly before the Court and are admissible.

V. CONCLUSION

The Court finds that the Government presented credible testimony and evidence sufficient to find beyond a reasonable doubt that Defendant was operating a motor vehicle under the influence of alcohol. As such, it is hereby Ordered, Adjudged and Decreed that Defendant Catherine Borja Pangelinan is **GUILTY** of the offense of Driving Under the Influence, in violation of 9 CMC § 7105.

The Court finds that the Government presented credible testimony and evidence sufficient to find beyond a reasonable doubt that Defendant was operating a motor vehicle without a valid driver’s license in her possession. As such, it is hereby Ordered, Adjudged and Decreed that Defendant Catherine Borja Pangelinan is **GUILTY** of the offense of Driving Without a Driver’s License, in violation of 9 CMC § 2201.

The Court finds that the Government failed to present credible testimony and evidence sufficient to find beyond a reasonable doubt that Defendant was operating a vehicle in willful or wanton disregard for the safety of persons or property. Defendant was not personally observed driving in a reckless manner and Officer David testified that he cited Defendant for reckless driving [p. 5] only because she was intoxicated. As such, it is hereby Ordered, Adjudged and Decreed that Defendant Catherine Borja Pangelinan is **NOT GUILTY** of the offense of Reckless Driving, in violation of 9 CMC § 7104.

The Court finds that the Government failed to present credible testimony and evidence sufficient to find beyond a reasonable doubt that there was a lawful arrest prior to the request for a blood alcohol test. 9 CMC § 7106 states that “[t]he test shall be administered at the request of a police officer having reasonable grounds to believe the person operating or in actual physical control of a motor vehicle is under the influence of alcohol or drugs only after (1) a **lawful arrest** and (2) the police officer has informed the person of the sanctions provided in this

Section. 9 CMC § 7106 (emphasis added). As such, it is hereby Ordered, Adjudged and Decreed that Defendant Catherine Borja Pangelinan is **NOT GUILTY** of the offense of Refusing to Submit to an Alcohol Blood Test, in violation of 9 CMC § 7106.

Sentencing on this matter is hereby set for November 9, 1999 at 10:00 a.m.

So ORDERED this 7th day of October, 1999.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge