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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

JOSELITO CASTRO,

Defendant.

CRIMINAL CASE NO: 03-0407E

**ORDER DENYING DEFENDANT’S
MOTION TO SUPPRESS**

I. INTRODUCTION

THIS MATTER came before the court on Defendant’s *Motion to Suppress*. Assistant Attorneys General, Rebecca Warfield and Alexander Shapiro, appeared on behalf of the Commonwealth of the Northern Mariana Islands (“Government”). Mitchell Ahnstedt and Viola Alepuyo, of the Office of the Public Defender, appeared on behalf of Joselito Castro (“Defendant”). Defendant’s Motion to Suppress Statements Made to Law Enforcement is based on the following facts.

1
2 **II. FACTS**

3 According to police reports and testimony, on December 19, 2004, Department of Public
4 Safety (“DPS”) officers responded to a call at Fina Sisu, Apartment C8, for the alleged sexual abuse
5 of a minor. Upon being admitted to the apartment, the alleged victim’s mother told the officers that
6 Defendant had kissed her daughter and touched her breast. When a police officer turned toward two
7 men seated on the couch, Defendant immediately stated that he had “[done] something wrong.”
8 Officer Limes, one of the responding officers, asked Defendant what it was he had done wrong, at
9 which time Defendant acknowledged that he had kissed the alleged victim. Defendant then
10 identified himself and showed Officer Limes his entry permit.

11 After some “brief” follow up questions, Officer Limes informed Defendant of his *Miranda*
12 rights and placed him under arrest. At that time, Defendant indicated he understood his *Miranda*
13 rights as explained to him by Officer Limes. Defendant was then transported to the Criminal
14 Investigations Bureau (CIB). Upon arrival at CIB, Defendant was informed of his constitutional
15 rights, and a constitutional rights form was filled out. Defendant was also notified of his right to
16 speak with officials from the Philippines Consulate Office, and Defendant signed a Mandatory
17 Consular Notification form. Defendant indicated that he understood his rights and wanted to make
18 a statement.

19 All of the aforementioned was done in English. Defendant now seeks to suppress both the
20 statement he made to Officer Limes at Fina Sisu, Apartment C8, as well as the statement made at
21 CIB in response to police questioning.

22 **III. ANALYSIS**

23 The basis for Defendant’s motion is that the first statement was made before Defendant was
24 read his *Miranda* rights, Defendant’s *Miranda* waiver at CIB was not knowing and voluntarily
25 because Defendant does not understand English, and law enforcement personnel violated Article 36
26 of the Vienna Convention.

27 Turning first to Defendant’s statement at Fina Sisu, Apartment C8. The warnings set forth
28 in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), are required

1 whenever a suspect is subjected to custodial interrogation. The Defendant has the burden of
2 establishing that custody existed, and once established, the prosecution has the burden of
3 establishing that the *Miranda* warnings were properly administered. *Commonwealth v. Santos*,
4 Crim. No. 93-0163 (N.M.I. Super. Ct. Sept. 22, 1994) (Decision and Order on Defendant Richard
5 Santos' Motion to Suppress at 3). The United States Supreme Court defines custodial interrogation
6 as "questioning initiated by law enforcement officers after a person has been taken into custody or
7 otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444, 86
8 S. Ct. at 1612, 16 L. Ed. 2d at 706. Accordingly, "police are not required to administer *Miranda*
9 warnings to everyone whom they question." *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711,
10 714, 50 L. Ed. 2d 714, 719 (1977); *Stansbury v. California*, 511 U.S. 318, 322, 114 S. Ct. 1526,
11 1528-29, 128 L. Ed. 2d 293, 298 (1994). In meeting his burden, Defendant must show by a totality
12 of the circumstances that *Miranda* applies to a particular situation. See *California v. Beheler*, 463
13 U.S. 1121, 103 S. Ct. 3517, 77 L. Ed. 2d 1275 (1983); *Mathiason*, 429 U.S. 492, 97 S. Ct. 711, 50
14 L. Ed. 2d 714 (1977). The presence of a law enforcement personnel does not automatically result
15 in a de facto arrest requiring *Miranda* warnings, especially when there is not yet probable cause to
16 arrest someone. *California v. Sims*, 853 P.2d 992 (Cal. 1993).

17 Here, although DPS officers were present at Finu Sisu, there was no de facto arrest. DPS
18 officers had just entered the Finu Sisu apartment, were not aware of Defendant's identity, and did
19 not yet have probable cause to arrest Defendant before Defendant stated that he had "done
20 something wrong." Rather, Defendant initiated the conversation, stating he had "done something
21 wrong" when police turned to determine which of the men seated on the coach was Joselito Castro.
22 The statement was freely and spontaneously given and not the product of a police interrogation. As
23 such, Defendant was not in custody and *Miranda* does not apply.

24 Turning next to Defendant's waiver of his *Miranda* rights while in custody at CIB. It is a
25 well settled principle of law, that in order to assure the Constitutional Fifth Amendment privilege
26 against self-incrimination, under inherently coercive circumstances, a suspect may not be subjected
27 to custodial interrogation unless he or she knowingly and intelligently has waived the rights to
28 remain silent, to the presence of an attorney, and to appointed counsel in the event the suspect is

1 indigent. The Government bears the burden of establishing, through a preponderance of the
2 evidence, that the waiver complies with knowing, intelligent, and voluntary requirements. *Lego v.*
3 *Twomey*, 404 U.S. 477, 484-85, 92 S. Ct. 619, 624, 30 L. Ed. 2d 618, 624 (1972) . When a
4 Defendant contests the validity of a signed waiver of such rights, the presumption is that there was
5 not a waiver, and the court will indulge every reasonable presumption against waiver of fundamental
6 constitutional rights. *Moran v. Burbine*, 475 U.S. 412, 450-51 & n.32, 106 S. Ct. 1135, 1156-57 &
7 n.32, 89 L. Ed. 2d 410, 440 & n.32 (1986); *North Carolina v. Butler*, 441 U.S. 369, 99 S. Ct. 1755,
8 60 L. Ed. 2d 286 (1979); *Fare v. Michael C.*, 442 U.S. 707, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979).

9 Here, however, Defendant asserts that he was unable to voluntarily waive his rights because
10 he does not understand English. All of Defendant’s statements to law enforcement personnel were
11 made in English. After Defendant dictated responses to law enforcement questions, in English, he
12 was handed a copy of the form, filled out in English. Defendant then made corrections to the form,
13 in English. A long time family friend, testifying in English, stated that Defendant spoke English
14 and communicated with others, including her children, in English. A second witness also testified
15 that Defendant communicates with her in English. As such, while the Court will not hesitate to
16 recognize the valid need for an interpreter when it is warranted, in this case, Defendant’s contention
17 that he does not speak English, and; therefore, his *Miranda* wavier was involuntary, is unconvincing.

18 The third assertion made by Defendant is that law enforcement officials violated Article 36
19 of the Vienna Convention on Consular Relations and Optional Protocol on Disputes, April 24, 1963,
20 21 U.S.T. 77 (“Vienna Convention”) .¹ The Court notes that remedies available for violation of a
21 requirement under the Vienna Convention do not include suppression of evidence. *See United*
22 *States v. Esparza-Ponce*, 7 F. Supp. 2d 1084, 1095-96 (S.D. Cal. 1998). Even if the remedy of
23 suppression of evidence were available, it would not be available absent a showing of prejudice.
24 Prejudice is established where a defendant “shows that he did not know of his right to consult with
25 consular officials, that he would have availed himself of that right had he known of it, and that there

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27 ¹ The United Nations adopted the Vienna Convention on Consular Relations and Optional Protocol on Disputes,
28 April 24, 1963, 21 U.S.T. 77 to which the United States and the Phillipines are signatories. The Vienna Convention
applies in the Northern Mariana Islands pursuant to Article I, § 102 of the COVENANT TO ESTABLISH A COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801
note, *reprinted in CMC at B-101, et seq.*

1 was a likelihood that the contact would have resulted in assistance to him.” *Commonwealth v.*
2 *Inabangan*, Crim. No. 98-0248 (N.M.I. Super. Ct. Dec., 2, 1999) (Order Denying Motion to
3 Suppress and Denying Motion for Discovery at 4 (*quoting United States v. Rangel-Gonzales*, 617
4 F.2d 529, 533 (9th Circuit 1980))). Defendant has not made such a showing of prejudice.
5 Defendant stated that he understood his rights to speak with a consular official. Furthermore, no
6 evidence was presented that consular officials were not notified via facsimile as indicated by law
7 enforcement personnel, nor was there evidence presented that the consular officials would have been
8 of assistance to Defendant.. As such, Defendant’s claims under Article 36 of the Vienna Convention
9 are without merit.

10 IV. CONCLUSION

11 For the above stated reasons, Defendant’s *Motion to Suppress* is hereby **DENIED**.
12 SO ORDERED this 16th day of August 2004.

13
14 /s/
David A. Wiseman
Associate Judge