

CLERK OF COURT  
SUPERIOR COURT  
F110

2017 MAY 29 PM 4:03

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

DEPUTY CLERK OF COURT

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

**Plaintiff,**

**v.**

**CHRISTOPHER FITIAL RANGAMAR,  
DOB: 02/25/1993**

**Defendant.**

) **TRAFFIC CASE NO. 15-1535**  
)  
) **ORDER DENYING DEFENDANT'S**  
) **MOTION TO SUPPRESS STATEMENTS**  
) **AS DEFENDANT VOLUNTARILY**  
) **SPOKE WITH OFFICERS PRIOR TO**  
) **BEING TAKEN INTO CUSTODY AND**  
) **DEFENDANT ACTED IN A MANNER**  
) **INCONSISTENT WITH HIS RIGHT TO**  
) **REMAIN SILENT WHILE IN CUSTODY,**  
) **THUS VOLUNTARILY WAIVING HIS**  
) **RIGHTS**

**I. INTRODUCTION**

This matter came before the Court on January 13, 2016 and March 1, 2016 in Courtroom 220A on the Defendant's Motion to Suppress Statements.<sup>1</sup> The Defendant Christopher Fitial Rangamar ("Defendant") was present and represented by Assistant Public Defender Tillman Clark. The Commonwealth was represented by Assistant Attorney General Emily Cohen.

On December 23, 2015, the Defendant filed his Motion to Suppress Statements. The Defendant seeks to suppress all statements made to Department of Public Safety officers on the night of June 5, 2015 and morning of June 6, 2015. The Defendant contends that his Fifth Amendment rights were violated because the Defendant was not given *Miranda* warnings before

<sup>1</sup> The Court clarifies Defendant's Motion to Exclude Evidence, filed Dec. 31, 2016, and Defendant's Motion to Suppress Statements were taken under advisement on March 1, 2016. The Defendant's Motion to Exclude the HGN Evidence was not taken under advisement, as erroneously stated in the Minute Order dated March 1, 2016, as the motion was resolved January 13, 2016 when the Commonwealth declared no intention of introducing expert testimony regarding the HGN evidence. *See Commonwealth v. Rangamar*, Traffic No. 15-01535 (NMI Super. Ct. March 1, 2016) (Minute Order as to March 1, 2016 Hearing); *Commonwealth v. Rangamar*, Traffic No. 15-01535 (NMI Super. Ct. Jan. 13, 2016) (Minute Order at 1). The Court issued its order regarding Defendant's Motion to Exclude Evidence on April, 24, 2017. *See Commonwealth v. Rangamar*, Traffic No. 15-01535 (NMI Super. Ct. April 24, 2017) (Order Denying Defendant's Motion to Exclude All Evidence Obtained as a Result of the Defendant's Arrest as There Was Probable Cause for The Arrest).

1 making statements prior to his arrest and that statements made both before and after his arrest were  
2 the involuntary product of police coercion.

3 The Commonwealth filed its opposition on January 7, 2016. The Commonwealth argues the  
4 Defendant was not subject to custodial interrogation at any point, so the statements were voluntary  
5 and his Fifth Amendment rights had not attached to the statements. Further, the Commonwealth  
6 contends, even if the Defendant were in custodial interrogation at any point, such statements were  
7 made after the Defendant validly waived his Fifth Amendment rights.

8 Based on a review of the filings, oral arguments, and applicable law, the Court makes the  
9 following order.

## 10 II. BACKGROUND

11 This matter stems from an automobile accident involving the Defendant. The Defendant was  
12 charged with violations of: driving while under the influence of alcohol under 9 CMC § 7105(a)(2);  
13 failure to yield under 9 CMC § 5351(d); reckless driving under 9 CMC § 7104(a); the prohibition  
14 on open alcohol containers in the passenger compartment of motor vehicles under 9 CMC §  
15 5853(c); and the implied consent of operators to submit to breathalyzer tests under 9 CMC §  
16 7106(c). Citation at 1. The Defendant seeks to suppress all statements the Defendant made to  
17 officers prior to his arrest at the scene of the accident and all statements made to officers after his  
18 arrest. At a hearing on January 13, 2016, the Court heard Officer Daniel Smith's testimony on the  
19 events of June 5, 2015 and June 6, 2015. The Court now makes the following factual findings.

### 20 Defendant's Statements at the Scene of the Accident

21 On June 5, 2015 around 11:55 p.m., Officer Smith and Officer Hans Pua<sup>2</sup> responded to the  
22 scene of an automobile accident in San Vicente that involved the Defendant and another driver. The  
23 Defendant, three passengers of the Defendant's vehicle, the driver of the other vehicle that was

---

24 <sup>2</sup> Officer Pua performed other investigation at the scene, but did not speak with the Defendant.

1 involved in the accident, an off-duty officer who lived near the scene, fire personnel, and medical  
2 personnel were all present at the scene. Upon arriving at the scene, Officer Smith first spoke with  
3 Detective Edward Cepeda, the off-duty officer in plain clothes, who witnessed the accident.  
4 Detective Cepeda told Officer Smith that the Defendant was the driver of the blue Toyota Camry  
5 involved in the accident and that the Defendant smelled like alcohol. Officer Smith next  
6 interviewed Davie Matagolai, the other driver involved in the accident. Mr. Matagolai stated,  
7 among other things, that the Defendant, without signaling, turned in front of Mr. Matagolai.

8         Officer Smith then questioned the Defendant about the accident for approximately ten  
9 minutes. Defendant stated he was driving his passengers home from a birthday party that they had  
10 all attended. Officer Smith asked the Defendant if he had been drinking. The Defendant replied,  
11 “Just a little.” The Defendant further admitted he had drunk eight or nine cans of Busch beer.

12         During the questioning, Officer Smith noticed the Defendant’s eyes were bloodshot, face  
13 was flushed and puffy, and speech was slurred. Also, Officer Smith detected the odor of alcohol  
14 coming from the Defendant. Officer Smith stood approximately three feet away from the Defendant  
15 and did not physically restrain the Defendant. Officer Smith also noticed the Defendant had  
16 difficulty standing, was swaying, and had to lean upon a car to support himself. Additionally,  
17 Officer Smith saw cans of beer and a wine cooler container in the Defendant’s car.<sup>3</sup> When asked  
18 about the beer cans and wine cooler, the Defendant said they were his.

19         When Officer Smith continued to ask questions, the Defendant stated he did not want to talk  
20 any more. Based upon his observations and initial conversation with the Defendant, Officer Smith  
21 began a Field Sobriety Test. However, as it began to rain, Officer Smith became concerned for the  
22 Defendant’s safety and the safety of other motorists on the road because the roads were wet and  
23 slick, so he decided to discontinue the test at the scene and complete the test at the police station.

24 \_\_\_\_\_  
<sup>3</sup> The record does not detail what stage of the investigation permitted Officer Smith to observe the alcohol containers.

1           Around 12:29 a.m. on June 6, 2015, Officer Smith placed the Defendant under arrest for  
2 reckless driving and driving under the influence of alcohol. While arresting the Defendant, Officer  
3 Smith verbally advised the Defendant of his constitutional rights. Officer Smith and the Defendant  
4 communicated in English throughout their interactions and the advisement of constitutional rights  
5 was in English. No evidence has been presented to show that Officer Smith asked if the Defendant  
6 understood or waived his rights or that the Defendant affirmatively stated he understood his rights  
7 and/or expressly waived his rights at the time of arrest.

8   Defendant's Statements in Transport

9           Officer Smith then transported the Defendant to the Department of Public Safety ("DPS")  
10 Central. While in transit, without any prompting or questioning by Officer Smith, the Defendant  
11 spontaneously admitted he had been drinking alcohol.

12   Defendant's Statements at DPS Central

13           Once at DPS Central, Officer Smith attempted to continue the Field Sobriety Test after  
14 obtaining the Defendant's consent. However, the test was again incomplete because the Defendant  
15 fell down twice and then said he could not complete the test.

16           Officer Smith next provided the Defendant with a Breathalyzer Consent form and asked the  
17 Defendant only those questions on the form. The Defendant refused to sign the form or submit to  
18 the breathalyzer and asked for his probation officer.

19           Next, Officer Smith provided the Defendant with a written Constitutional Rights form and  
20 read the form to the Defendant. When asked if he would sign the form to acknowledge his  
21 constitutional rights, invoke his right to counsel, and/or waive his rights the Defendant made an  
22 explicit statement to the effect that he was in trouble<sup>4</sup> and said, "My contract said I cannot sign  
23

---

24           <sup>4</sup> The Defendant stated, "I'm fucked."

1 anything my probation officer said, but I cannot sign until I see my probation officer, sorry I  
2 cannot.”

3 Then, Officer Smith prepared the Traffic Citation form (“citation”) and asked the Defendant  
4 to sign the promise to appear in court. The Defendant refused to sign the citation saying, “I will not  
5 sign anything until I see my Probation Officer John Del Rosario. I will sober up by that time and I  
6 will show you. I will show you the form.”

### 7 Defendant’s Statements at the Department of Corrections

8 The Defendant was then taken to the Department of Corrections (“DOC”). Later in the  
9 morning of June 6, 2015, while still at DOC, the Defendant asked for Officer Smith to come to  
10 DOC so the Defendant could sign the citation.<sup>5</sup> Officer Smith brought the citation, around 9:22 a.m.  
11 and asked the Defendant if the Defendant knew why he was at DOC. The Defendant stated he had  
12 been intoxicated and he was on probation for driving under the influence in 2014. Officer Smith  
13 then asked if the Defendant knew the passengers that had been in the car during the accident. The  
14 Defendant gave Officer Smith the names of the passengers.

### 15 **III. LEGAL STANDARD**

16 “Due process requirements exist to prevent fundamental unfairness in the use of evidence.”  
17 *Commonwealth v. Mettao*, 2008 MP 7 ¶ 16 (citing *Colorado v. Connelly*, 479 U.S. 157, 167  
18 (1986)). Defendants are protected against self-incrimination and the inherently coercive effects of  
19 custodial interrogations under the Fifth Amendment of the United States Constitution. *Id.* (citing  
20 U.S. Const. amend. V); *see also* NMI Const. Art. I § 5. When a conviction is based upon an  
21 involuntary confession the defendant is deprived of due process. *Id.* (citing *Rogers v. Richmond*,  
22 365 U.S. 534, 540-541 (1961)). “A motion to suppress evidence is used to remove involuntary  
23

---

24 <sup>5</sup> Pursuant to 9 CMC § 1302 when a person refuses to sign the citation (promising to appear before the court) he or she cannot be released until he or she has appeared before a judge.

1 confessions from consideration, as well as other evidence in a criminal trial that is secured  
2 coercively or in an otherwise illegal manner.” *Id.* (citing *Commonwealth v. Campbell*, 4 NMI 11, 14  
3 n.1 (1993)).

#### 4 IV. DISCUSSION

5 The Defendant argues that suppression is warranted because the Defendant was in custody  
6 at all times when he spoke with officers before his formal arrest and, therefore, should have been  
7 given his *Miranda* rights before any statements were made; and because the Defendant’s statements  
8 were the involuntary product of coercive police action in violation of the Fifth Amendment. The  
9 pivotal issues are (a) at what point in the events of June 5, 2015 and June 6, 2015 the Defendant’s  
10 Fifth Amendment rights attached and (b) at what point, if any, a violation of the Fifth Amendment  
11 occurred that would require suppression of any statements. Therefore, the first issue is at what point  
12 the Defendant was in custodial interrogation and the Defendant’s Fifth Amendment rights attached  
13 to his statements.

#### 14 **A. The Defendant must be subject to custodial interrogation for his Fifth Amendment rights 15 to apply.**

16 There are four separate instances at issue. First, the Defendant was questioned by Officer  
17 Smith at the scene of a traffic accident for approximately ten minutes before being arrested for  
18 driving under the influence of alcohol. During questioning the Defendant admitted to driving his  
19 vehicle after drinking eight or nine cans of beer. Second, after being arrested and while he was in  
20 the police vehicle being transported to DPS Central, the Defendant again stated that he had been  
21 drinking without any questioning or prompting from the officer. Third, at DPS Central, in response  
22 to being asked to sign a number of forms,<sup>6</sup> the Defendant refused to sign any form and made more  
23

24 \_\_\_\_\_  
<sup>6</sup> The forms included: the Breathalyzer Consent form, the Constitutional Rights form, and the citation.

1 incriminating statements. Fourth, after being transported to and detained at DOC for several hours,  
2 the Defendant admitted he was intoxicated in response to a question asked by Officer Smith.

3 The Defendant argues that his Fifth Amendment rights, protected under *Miranda* (“*Miranda*  
4 protections”), were violated each time he made a statement and, thus, each statement should be  
5 suppressed. The Commonwealth contends that the Defendant was only in custody after his formal  
6 arrest, but that the Defendant was not subject to interrogation at any point while he was in custody.

7 The Fifth Amendment protections affect only statements that are a product of compelling  
8 government influence. *Rhode Island v. Innis*, 446 U.S. 291, 299-300 (1980) (citing *Miranda v.*  
9 *Arizona*, 384 U.S. 436, 478 (1966)). “Volunteered statements of any kind are not barred by the Fifth  
10 Amendment and their admissibility is not affected by [the court’s] holding today.” *Id.* at 300  
11 (quoting *Miranda*, 384 U.S. at 478). Therefore, a suspect must be in custody and subject to  
12 interrogation for Fifth Amendment rights and *Miranda* protections to attach. *Id.* (citing *Miranda*,  
13 384 U.S. at 444).

14 Therefore, the next issues are (1) at what point the Defendant was in custody and then (2) in  
15 which instance(s) the Defendant was subject to custodial interrogation.

16 ***I. At what point the Defendant was in custody.***

17 A defendant is in custody when he is “formally arrested” or otherwise deprived of his  
18 “freedom of action in any significant way.” *Mettao*, 2008 MP 7 ¶ 17 (citing *Orozco v. Texas*, 394  
19 U.S. 324, 327 (1969)). The Defendant was in custody from the point he was formally arrested. The  
20 issue, then, is whether the Defendant was in custody at the scene of the accident prior to his arrest.

21 To determine whether a suspect is in custody, the court evaluates “whether a reasonable  
22 person in the defendant’s position would believe he or she was in police custody of the degree  
23 associated with a formal arrest.” *Commonwealth v. Ramangmau*, 4 NMI 227, 232 (1995) (citing  
24 *Connecticut v. DesLaurier*, 646 A.2d 108, 111 (Conn. 1994)). Whether the atmosphere was “police

1 dominated” is a key factor in this determination. *Id.* Other factors include the location of the  
2 questioning, whether people other than the uniformed officers were present, the length of the  
3 questioning, and whether the defendant was restrained or treated harshly by officers. *See Id.* (where  
4 the court held that a reasonable person in the defendant’s position “would not have felt the  
5 pressures of police domination of the type to which *Miranda* and its progeny speak” when the  
6 defendant was briefly questioned in public at the scene of an accident about the events leading up to  
7 the accident, the defendant was not restrained or treated harshly by officers, and bystanders were  
8 present at the scene).

9 A person is not ordinarily in custody when they are interviewed as part of a traffic stop.  
10 *Commonwealth v. Cabrera*, Crim. No. 09-0037 (NMI Super. Ct. Aug. 19, 2009) (Order Granting In  
11 Part And Denying In Part Defendants’ Motion to Suppress at 5) [hereafter *Cabrera* Suppression  
12 Order] (citing *Berkemer v. McCarty*, 468 U.S. 420[, 439] (1984)); *see also Pennsylvania v. Bruder*,  
13 488 U.S. 9, 11 (1988); *Howes v. Fields*, 132 U.S. 1181, 1190 (2012). While a person may not feel  
14 free to leave the scene of a traffic stop, the U.S. Supreme Court has held that “such detention does  
15 not ‘sufficiently impair [the detained person’s] free exercise of his privilege against self-  
16 incrimination to require that he be warned of his constitutional rights.” *Howes*, 132 U.S. at 1190  
17 (quoting *Miranda*, 468 U.S. at 437).

18 Instead, traffic stops are more akin to a “*Terry* stop” than a custodial interrogation. *Cabrera*  
19 Suppression Order at 5 (citing *United States v. Sullivan*, 138 F.3d 126, 131 (4th Cir. 1998)). A  
20 “*Terry* stop” is a brief investigative detention authorized by *Terry v. Ohio*, 392 U.S. 1 (1968), in  
21 which “a police officer who lacks probable cause but whose observations lead him reasonably to  
22 suspect that a particular person has committed . . . a crime may detain that person briefly in order to  
23 investigate the circumstances that provoke suspicion.” *Commonwealth v. Taitano*, Crim. No. 13-  
24 0111 (NMI Super. Ct. Sept. 8, 2014) (Order Denying Defendant’s Motion to Suppress Statement at



1 4-5) (quoting *Berkemer*, 468 U.S. at 439). Such stops are specifically authorized in the  
2 Commonwealth of the Northern Mariana Islands (“CNMI”) when the suspected crime is “a felony  
3 crime, 6 CMC § 6103(d); or a traffic violation, see 9 CMC §§ 1302-04 (indicating police officers  
4 may stop individuals for violations of the traffic code).” *Commonwealth v. Crisostomo*, 2014 MP  
5 18 ¶ 18. However, to satisfy the protections against unreasonable search and seizure of article I  
6 section 3 of the NMI Constitution and the Fourth Amendment of the U.S. Constitution when  
7 making such an investigatory stop, “the officer must have a reasonable suspicion that criminal  
8 activity may be afoot.” *Commonwealth v. Arurang*, 2017 MP 1 ¶ 15 (quoting *Crisostomo*, 2014 MP  
9 18 ¶ 18).

10 When determining if an officer had reasonable suspicion, courts “look at the totality of the  
11 circumstances to ‘see whether the detaining officer has a particularized and objective basis for  
12 suspecting legal wrongdoing.’” *Arurang*, 2017 MP 1 ¶ 16 (quoting *Crisostomo*, 2014 MP 18 ¶ 18).  
13 “Bases for suspicion include inferences and deductions that officers draw from applying their  
14 experience and specialized training to the situation at hand.” *Id.* (quoting *Crisostomo*, 2014 MP 18 ¶  
15 19).

16 In sum, to be a valid *Terry* stop the objective facts in the totality of the circumstances must  
17 have given Officer Smith reasonable suspicion to believe that the Defendant had committed a traffic  
18 violation and the detention must not have been such that a reasonable person in the Defendant’s  
19 position would believe his or her freedom of movement was impaired beyond that of a normal  
20 traffic investigation.

21 The objective facts are that Officer Smith was dispatched to the scene of an automobile  
22 accident where he was told that the Defendant was a driver in the accident, the Defendant failed to  
23 signal before turning in front of Mr. Matagolai, and the Defendant smelled like alcohol. In the  
24 totality of the circumstances, the scene of the accident and the statements that the Defendant turned

1 in front of Mr. Matagolai without signaling and smelled like alcohol gave Officer Smith an  
2 objective and particularize basis to believe the Defendant had committed the offense of failure to  
3 yield<sup>7</sup> and/or reckless driving.<sup>8</sup> Further, the circumstances of the accident, the failure to yield or  
4 signal, and the smell of alcohol gave Officer Smith an objective and particularize basis to believe  
5 the Defendant had committed the offense of driving under the influence of alcohol.<sup>9</sup> As such,  
6 Officer Smith had reasonable suspicion to briefly detain the Defendant in a *Terry* stop to investigate  
7 the circumstances of the accident.

8 Further, the Defendant was not physically restrained in any manner during Officer Smith's  
9 questioning. Nor was the Defendant treated harshly by Officer Smith. Nor is there any evidence that  
10 the Defendant attempted to leave, but was prevented from doing so. Moreover, the questioning was  
11 done in a public place and individuals other than uniformed officers were present; the driver of the  
12 other vehicle, three passengers of the Defendant's vehicle, an off duty officer in plain clothes, fire  
13 personnel, and medical personnel were all present besides the Defendant and the two uniformed  
14 officers. In such circumstances, a reasonable person in the Defendant's position would not believe  
15 his freedom of movement was restricted beyond that of a normal traffic stop for the investigation of  
16 an accident before the Defendant's formal arrest.<sup>10</sup> Therefore, the Defendant was not in custody  
17 when he made statements to officers prior to his arrest.<sup>11</sup>

---

19 <sup>7</sup> 9 CMC § 5351(d).

20 <sup>8</sup> 9 CMC § 7104(a).

21 <sup>9</sup> 9 CMC § 7105(a)(2).

22 <sup>10</sup> See e.g., *Ramangmau*, 4 NMI 227 (1995) (where the CNMI Supreme Court held that a defendant was not in custody  
23 prior to arrest at an automobile accident, where the defendant was questioned in public for a few minutes, officers did  
24 not physically restrain the defendant or treat the defendant harshly, and other bystanders were present).

<sup>11</sup> The Court notes the Defendant argues he invoked his rights before his arrest when he said he did not want to answer  
more questions. However, this statement could not invoke the Defendant's rights because he was not yet in custody and  
a defendant cannot anticipatorily invoke his rights. *People v. Buskirk*, 175 Cal. App. 4th 1436, 1448 (2009) (quoting  
*United States v. LaGrone*, 43 F.3d 332, 339 (7th Cir. 1994)); see also, *McNeil v. Wisconsin*, 501 U.S. 171, 182 n.3  
(1991).

1           However, the Defendant was in custody when making statements while in transport to DPS  
2 Central, at DPS Central, and at DOC. The Court will, next, determine in which instance(s) the  
3 Defendant was subject to custodial interrogation.

4           ***2. In which instance(s) the Defendant was subject to custodial interrogation.***

5           A defendant is subject to interrogation when subjected “to ‘express questioning’ or its  
6 ‘functional equivalent,’ which includes ‘words or actions on the part of the police (other than those  
7 normally attendant to arrest and custody) that the police should know are reasonably likely to elicit  
8 an incriminating response.’” *Commonwealth v. Yan*, 4 NMI 334, 338 (1996) (quoting *Innis*, 446  
9 U.S. at 301); *Mettao*, 2008 MP 7 ¶ 17. Interrogation must reflect a measure of compulsion above  
10 and beyond that inherent in custody itself. *Innis*, 446 U.S. at 300.

11           ***i. The Defendant was not subject to custodial interrogation while in transport to  
12 DPS Central because officers did nothing to elicit the statements.***

13           The Defendant made incriminating statements in the police vehicle while in transport to  
14 DPS Central. Officer Smith did not question the Defendant in the police vehicle. Nor did Officer  
15 Smith make any other statement or action that was reasonably likely to elicit an incriminating  
16 response from the Defendant. Therefore, the Defendant was not subject to interrogation while  
17 making statements in the police vehicle in transport to DPS Central. Suppression of the statements  
18 is not warranted as the statements were voluntary.

19           ***ii. The Defendant was not subject to custodial interrogation while at DPS Central  
20 because the Defendant was not subjected to more than words and actions  
21 normally attendant to arrest and custody.***

22           While at DPS Central, Officer Smith provided the Defendant with a Breathalyzer Consent  
23 form, a Constitutional Rights form, and a citation, all of which Officer Smith read to the Defendant  
24

1 and asked the Defendant to sign. While refusing to sign the forms, the Defendant made statements  
2 about his probation officer, stated that he would sober up, and made an explicit statement.<sup>12</sup>

3 The contents of the Breathalyzer Consent form, Constitutional Rights form, and citation are  
4 standardized information normally attendant to arrest and inform suspects of their legal rights and  
5 responsibilities.<sup>13</sup> As such, they are not interrogation designed to elicit nor are reasonably likely to  
6 elicit incriminating statements. The Defendant was not subject to interrogation when he made his  
7 statements at DPS Central. As such, suppression of the Defendant's statements at DPS Central is  
8 not warranted because the statements were voluntary statements by the Defendant that were not  
9 made in response to custodial interrogation.

10 ***iii. The Defendant was subject to custodial interrogation while at DOC.***

11 While at DOC, Officer Smith asked the Defendant if the Defendant knew why the  
12 Defendant was in DOC. The Defendant responded that he had been intoxicated and was on  
13 probation for driving under the influence in 2014. While Officer Smith may not have intended to  
14 elicit incriminating statements by this question since the answer could have been a simple yes or no,  
15 Officer Smith should have known that the question was reasonably likely to elicit an elaborated,  
16 incriminating answer from the Defendant. Thus, the Defendant was in custody and subjected to  
17 express questioning that was likely to elicit an incriminating response. Accordingly, the Court finds  
18 that the Defendant was subject to custodial interrogation while at DOC.

19 In sum, only Defendant's statements at DOC were made in custodial interrogation and, thus,  
20 invoked *Miranda* protections. Because the Defendant was subject to custodial interrogation that

21 \_\_\_\_\_  
22 <sup>12</sup> The Defendant said, "I'm fucked."

23 <sup>13</sup> The Court notes that officers' statements or actions accompanying a reading of the contents of the forms may be  
24 coercive interrogation. *See e.g., Commonwealth v. Arurang*, Traffic No. 14-2029 (NMI Super. Ct. Dec. 1, 2014) (Order Granting Defendant's Motion to Suppress Breathalyzer Evidence Based on Violation of 9 CMC § 7106) (holding that additional inaccurate statements of the law that incentivized consenting to the test violated the mandatory warning provision of the implied consent law). However, the Court finds no evidence that Officer Smith made any such coercive actions or additional statements in the present case.

1 elicited incriminating statements, the Court must next consider whether the Defendant's statement  
2 at DOC should be suppressed for a violation of the Fifth Amendment.

3 **B. Whether the Defendant's Fifth Amendment rights were violated requiring suppression of**  
4 **the statements made at DOC.**

5 The Defendant argues that his statements to officers were the involuntary product of  
6 coercive police action in violation of the Fifth Amendment. The Commonwealth responds that the  
7 Defendant voluntarily waived his rights and there was no coercive police activity that violated the  
8 Fifth Amendment.

9 Confessions made while the defendant was in custodial interrogation are admissible when  
10 the government establishes that, under the totality of the circumstances, the defendant "intelligently,  
11 knowingly, and voluntarily" waived his or her rights. *Mettao*, 2008 MP 7 ¶ 19 (citing  
12 *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 8). Before commencing custodial interrogation, officers  
13 must advise a criminal suspect of what have become known as *Miranda* rights - specifically that  
14 "he has right to remain silent, that anything he says can be used against him in a court of law, that  
15 he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be  
16 appointed for him prior to any questioning if he so desires." *Miranda*, 384 U.S. at 479. Moreover,  
17 "[a]fter a valid *Miranda* waiver, advisement [of a suspect's *Miranda* rights] prior to continued  
18 custodial interrogation is unnecessary so long as a proper warning has been given, and the  
19 subsequent interrogation is reasonably contemporaneous with the prior knowing and intelligent  
20 waiver." *People v. Duff*, 58 Cal. 4th 527, 555 (2014) (internal quotations and citations omitted);  
21 *People v. Mickle*, 54 Cal. 3d 140, 170 (1991) (citing *People v. Braeseke*, 25 Cal. 3d 691, 701-702  
22 (1979); *People v. Johnson*, 32 Cal. App. 3d 988, 997 (1973)).<sup>14</sup> However, if a defendant

---

23  
24 <sup>14</sup> As there is no precedent within the law of the Commonwealth on the issue, the Court may look to other jurisdictions  
for guidance pursuant to 7 CMC § 3401. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 15.

1 unambiguously invokes his or her right to remain silent, interrogation must cease. *Berghuis v.*  
2 *Thompkins*, 560 U.S. 370, 381 (2010).

3 Therefore, to satisfy the requirements of the Fifth Amendment: (1) the Defendant must have  
4 been properly advised of his rights before any custodial interrogation; (2) any confession obtained  
5 during custodial interrogation must have been made as knowingly, voluntarily, and intelligently  
6 waiver and not as the product of police coercion; (3) any custodial interrogation that was not  
7 immediately preceded by an advisement of rights must have occurred after a proper advisement and  
8 have been reasonably contemporaneous with a valid waiver; and (4) interrogation must have ceased  
9 if the Defendant unambiguously invoked his right to remain silent.

10 ***1. The Defendant was properly advised of his rights while he was in custody.***

11 The Defendant argues that the Defendant was not properly advised of his rights before  
12 interrogation at the scene of the accident and, thus, the subsequent advisements were ineffective.  
13 The Commonwealth responds that the Defendant was properly advised of his rights when he was  
14 taken into custody and prior to any interrogation.

15 Before commencing custodial interrogation, law enforcement must advise a criminal suspect  
16 of his or her *Miranda* rights. *Miranda*, 384 U.S. at 479. The Defendant was in custody from the  
17 time of his arrest. However, he was not interrogated during custody until he was at DOC. The  
18 Defendant was advised of his *Miranda* rights after his arrest and prior to interrogation. At the scene  
19 of the accident, Officer Smith verbally informed the Defendant of his rights. At DPS Central, the  
20 Defendant was again informed of his rights both verbally by Officer Smith and in writing through  
21 the Constitutional Rights form. Therefore, the Defendant was properly advised of his rights while  
22 he was in custody.

23 However, neither of the advisements immediately preceded the interrogation and the  
24 Defendant was not readvised of his rights before the interrogation. Therefore, the Court must

1 determine whether there was valid waiver of the Defendant's rights and whether any valid waiver  
2 was reasonably contemporaneous with the interrogation so that readvisement was not required.

3 **2. The Defendant made a valid waiver of his rights.**

4 Around 12:29 a.m. on the morning of June 6, 2017, the Defendant was arrested and verbally  
5 advised of his *Miranda* rights in English. At all times prior to arrest the Defendant communicated  
6 with Officer Smith in English. The Defendant was then transported to DPS Central where he  
7 continued to communicate in English. Among other forms, the Defendant was given a  
8 Constitutional Rights form that advised the Defendant of his rights. Officer Smith also read the  
9 contents of the form to the Defendant in English and asked the Defendant to sign the form to  
10 indicate whether the Defendant chose to expressly invoke his right to counsel or expressly waive  
11 his constitutional rights. Instead of signing the form, the Defendant volunteered incriminating  
12 statements. The Defendant was then detained at DOC.

13 Later that morning, the Defendant requested that Officer Smith come to DOC so the  
14 Defendant could sign his citation.<sup>15</sup> Officer Smith arrived approximately nine hours after arresting  
15 the Defendant. Officer Smith asked the Defendant if the Defendant knew why the Defendant was in  
16 DOC. The Defendant responded that he had been intoxicated and was on probation for driving  
17 under the influence in 2014. Officer Smith then asked about the Defendant's passengers and the  
18 Defendant told Officer Smith their names.

19 A defendant's statements made in custodial interrogation are admissible if the government  
20 establishes that a defendant intelligently, knowingly, and voluntarily waived his or her rights.  
21 *Berghuis*, 560 U.S. at 382 (citations omitted). In determining whether a valid waiver has been  
22 made, the court considers the totality of the circumstances. *Mettao*, 2008 MP 7 ¶ 19 (citing  
23

---

24 <sup>15</sup> Pursuant to 9 CMC § 1302 when a person refuses to sign the citation (promising to appear before the court) he or she cannot be released until he or she has appeared before a judge.

1 *Ramangmau*, 4 NMI at 235). An explicit waiver by the defendant is not required, but silence alone  
2 is insufficient to establish a valid waiver. *Id.* at ¶ 20 (citing *North Carolina v. Butler*, 441 U.S. 369,  
3 373 (1979)). Where the government “shows that a *Miranda* warning was given and that it was  
4 understood by the [defendant], [a defendant’s] uncoerced statement establishes an implied waiver of  
5 the right to remain silent.” *Berghuis*, 560 U.S. at 384 (citations omitted). Thus, to determine  
6 whether a valid waiver was made, the Court must look at the totality of the circumstances to  
7 determine (i) whether the Defendant understood his rights to be able to knowingly and intelligently  
8 waive them; and (ii) whether the Defendant voluntarily waived his rights.

9 ***i. The Defendant understood his rights.***

10 The government is not required to explicitly ask a defendant if he understands his rights, but  
11 must show particular facts that establish that the defendant had sufficient knowledge to waive his  
12 rights. *Mettao*, 2008 MP 7 ¶ 20 (citations omitted). A defendant’s characteristics are relevant to this  
13 inquiry. *Id.* In the inquiry, courts look to “the particular facts and circumstances surrounding that  
14 case, including the background, experience and conduct of the accused.” *Butler*, 441 U.S. at 374-  
15 375 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). Additionally, relevant factors may  
16 include whether the defendant understood the language in which the warnings were given, the  
17 defendant’s previous experience with the criminal justice system, and the contents of the warnings  
18 themselves. *Mettao*, 2008 MP 7 ¶ 21; *accord Berghuis*, 560 U.S. at 385.

19 Here, the Defendant was familiar with English and communicated with Officer Smith solely  
20 in English. Further, the Defendant’s prior arrest for driving under the influence and probation  
21 sentence provided experience and understanding of his constitutional rights. Thus, the Defendant  
22 had sufficient knowledge of his constitutional rights and experience with the criminal justice system  
23 to knowingly waive his rights. The Court will next discuss whether, with this knowledge, the  
24 Defendant voluntarily waived his rights.



1 ***ii. The Defendant voluntarily waived his rights.***

2 “As a general proposition, the law can presume that an individual who, with a full  
3 understanding of his or her rights, acts in a manner inconsistent with their exercise has made a  
4 deliberate choice to relinquish the protection those rights afford.” *Berghuis*, 560 U.S. at 385 (citing  
5 *Butler*, 441 U.S. at 372-376; *Connelly*, 479 U.S. at 169-170). Further, where the government  
6 “shows that a *Miranda* warning was given and that it was understood by the [defendant], [a  
7 defendant’s] uncoerced statement establishes an implied waiver of the right to remain silent.”  
8 *Berghuis*, 560 U.S. at 384 (citations omitted).

9 Here, the Defendant was properly provided *Miranda* warnings verbally at the scene of the  
10 automobile accident and at DPS Central and was further advised of his rights in writing at DPS  
11 Central. After receiving the warnings, the Defendant repeatedly made uncoerced,<sup>16</sup> incriminating  
12 statements: first in the police vehicle on the way to DPS Central and then again at DPS Central. The  
13 Defendant volunteering such incriminating statements is acting in a manner inconsistent with the  
14 exercise of his right to remain silent and, therefore, a voluntary waiver of his rights.<sup>17</sup>

15 Even though the Defendant did not expressly waive his rights by signing the form, the  
16 Defendant acted in a manner inconsistent with the exercise of his right to remain silent with

17  
18 <sup>16</sup> The Court notes the Defendant’s claims that his vulnerable mental state and the fact that the questioning at the scene  
19 of the accident prior to arrest, the Field Sobriety Test and reading of forms at DPS Central, and the questions at DOC  
20 combine to create a coercively lengthy questioning of the Defendant and make his statement involuntary. However,  
21 while the Court may consider such factors as whether the “police knew that the [defendant] was unusually disoriented  
or upset at the time of arrest” when determining the voluntariness of a statement, a confession will not be considered  
involuntary absent coercive police activity. *Mettao*, 2008 MP 7 ¶ 19 (citing *Yan*, 4 NMI at 338). The Defendant was  
only subject to custodial interrogation when he spoke with Officer Smith at DOC, which was not a lengthy  
interrogation. Nor is there any other evidence that the Defendant was subjected to other hallmarks of coercion: physical  
threats of harm, deprivation of sleep or food, or impermissible psychological persuasion. *See Id.* (citations omitted).

22 <sup>17</sup> The Court notes that statements made in response to further interrogation after a defendant has unambiguously  
23 invoked his or her right to remain silent cannot be taken as a waiver. *Jones v. Harrington*, 829 F.3d 1128, 1137-1138,  
24 nt.2, 1140-1141 (9th Cir. 2016) (holding a defendant stating he did not “want to talk no more” was an unambiguous  
invocation of his right to remain silent and the interrogation should have ceased at that point) (citing *Michigan v.*  
*Mosley*, 423 U.S. 96, 104 (1976)). However, that is not at issue in the present case. The Defendant did not  
unambiguously invoke his right to silence while he was in custody. His refusal to sign the waiver or any other form was  
ambiguous in that it was both a refusal to expressly invoke and a refusal to expressly waive his rights and was  
accompanied by voluntary, incriminating statements.

1 knowledge of his rights and, thus, made a deliberate choice to relinquish the protection those rights  
2 afford. Accordingly, the Defendant's understanding of his rights coupled with his voluntary  
3 statements to Officer Smith amount to a valid waiver of his rights.

4 The Court must next determine whether the Defendant should have been readvised of his  
5 rights prior to the custodial interrogation at DOC.

6 **3. Readvisement of the Defendant's rights at DOC was unnecessary as there was a close**  
7 **connection to the Defendant's previous advisement and waiver of his rights.**

8 "After a valid *Miranda* waiver, readvisement [of a suspect's *Miranda* rights] prior to  
9 continued custodial interrogation is unnecessary so long as a proper warning has been given, and  
10 the subsequent interrogation is reasonably contemporaneous with the prior knowing and intelligent  
11 waiver." *Duff*, 58 Cal. 4th at 555 (internal quotations and citations omitted); *Mickle*, 54 Cal. 3d at  
12 170 (citing *Braeseke*, 25 Cal. 3d at 701-702; *Johnson*, 32 Cal. App. 3d at 997). In making this  
13 determination, courts examine the totality of the circumstances, including the amount of time that  
14 has passed since the waiver, any change in the identity of the interrogator or the location of the  
15 interview, any official reminder of the prior advisement, the suspect's sophistication or past  
16 experience with law enforcement, and any indicia that he subjectively understands and waives his  
17 rights. *Duff*, 58 Cal. 4th at 555 (citing *People v. Williams*, 49 Cal. 4th 405, 434 (2010)).

18 As discussed above, the Defendant validly waived his rights at DPS Central before being  
19 transferred to DOC. The interrogation at DOC was performed by the same officer who had  
20 previously advised the Defendant of his rights and was performed within 9 hours of the waiver of  
21 the Defendant's rights at DPS Central, so there was a close connection to the Defendant's previous  
22 waiver and previous advisements of his rights.<sup>18</sup> Further, the Defendant was under probation at the  
23 time for a previous arrest, so he had experience with law enforcement and the criminal justice

---

24 <sup>18</sup> Further, the Defendant admits that the interrogation was not abrogated by time from his voluntary statements and the  
advisement of his rights at DPS. Def.'s Mot. to Suppress Statements at ¶ 25.

1 system further showing he had knowledge of his rights. Additionally, the Defendant voluntarily  
2 chose to answer questions with this knowledge of his rights, which is an implied waiver of his  
3 rights. Therefore, in the totality of the circumstances, the Defendant's interrogation was reasonably  
4 contemporaneous with his previous valid waiver of his rights at DPS Central and readvisement was  
5 not necessary. As such, the Defendant was properly advised of his rights.

6 The only remaining issue, then, is whether an unambiguous invocation of rights made the  
7 interrogation impermissible.

8 **4. The Defendant did not unambiguously invoke his right to remain silent.**

9 When a defendant unambiguously invokes his or her right to remain silent or right to have  
10 counsel, interrogation must cease. *Berghuis*, 560 U.S. at 381 (holding that the defendant did not  
11 unambiguously invoke his right to remain silent by "not saying anything for a sufficient period of  
12 time"). Ambiguous acts, omissions, or statements by the defendant, however, are insufficient as the  
13 "police would be required to make difficult decisions about an accused's unclear intent and face the  
14 consequence of suppression 'if they guess wrong.'" *Id.* at 382 (quoting *Davis v. United States*, 512  
15 U.S. 453, 461 (1994)).

16 The Defendant did not ask for an attorney at any point, nor did he sign the request for  
17 counsel in his Constitutional Rights form. Moreover, the Defendant neither stated that he wanted  
18 the questioning to stop nor that he did not want to talk with officers; nor did he otherwise verbally  
19 invoke his right to silence while he was in custody.<sup>19</sup>

20 Further, while the Defendant refused to sign the Constitutional Rights form provision that  
21 expressly waived his rights, he also refused to sign the provision that invoked his right to counsel

---

22  
23 <sup>19</sup> The Court notes the Defendant argues he invoked his rights before his arrest when he said he did not want to answer  
24 more questions. However, this statement could not invoke the Defendant's rights because he was not yet in custody and  
a defendant cannot anticipatorily invoke his rights. *Buskirk*, 175 Cal. App. 4th at 1448 (quoting *LaGrone*, 43 F.3d at  
339; see also, *Wisconsin*, 501 U.S. at 182 n.3).

1 and his refusal to sign was accompanied by voluntary, incriminating statements that amount to a  
2 waiver. With such ambiguous and contradictory actions and statements, the Defendant did not  
3 unambiguously invoke his right to silence or counsel and Officer Smith could continue to  
4 interrogate the Defendant at DOC.

5 In sum, the Defendant knowingly, intelligently, and voluntarily waived his rights when  
6 making the statements to police officers. Further, the Defendant's statements made at DOC were  
7 made while he was subject to custodial interrogation, but were made after he was properly advised  
8 of his rights and readvisement was not required since the interrogation was after a proper  
9 advisement and was reasonably contemporaneous with his valid waiver of his rights. Moreover, the  
10 interrogation was permissible because the Defendant did not unambiguously invoke his right to  
11 remain silent or right to counsel.

12 **V. CONCLUSION**

13 For the reasons stated above, all of the Defendant's statements were made voluntarily and in  
14 accordance with the Defendant's Fifth Amendment rights. Accordingly, the Defendant's motion to  
15 suppress his statements made to police officers is **DENIED**.

16 **IT IS SO ORDERED** this 9<sup>th</sup> day of May, 2017.

17  
18  
19   
20 \_\_\_\_\_  
21 JOSEPH N. CAMACHO  
22 Associate Judge  
23  
24