



FOR PUBLICATION



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Robert C Naraja

CONFIDENTIAL

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

IN THE MATTER OF)	JUVENILE CASE NO. 19-0004
)	
)	
T.M.,)	
R.S.,)	
G.M., JR., and)	ORDER DENYING JUVENILE A.T.A.'S
A.T.A.,)	MOTION TO SUPPRESS EVIDENCE
)	
Minor Children.)	
)	

I. INTRODUCTION

THIS MATTER¹ came before the court on August 21, 2019 and August 22, 2019 at the Mariana Business Plaza for a hearing on Juvenile’s Motion to Suppress Evidence. Assistant Attorney General Frances Demapan represented the Commonwealth. Assistant Public Defender Heather Zona represented the Juvenile, who was present. Following the Motion Hearing, the matter was taken under advisement. Having now considered all the briefings and arguments, this Court hereby rules as follows:

¹ To add to the CNMI body of law, the Court publishes this Order balanced with the need to maintain the Juvenile’s confidentiality. Therefore, the Court uses initials for all of the private individuals involved in this matter. NMI R. JUV. P. 6(1).

By order of the Court, Presiding Judge Roberto C. Naraja

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1 **II. RELEVANT FACTS**

2 In the late hours of August 13, 2018, Juvenile was arrested and taken to the Department of
3 Corrections for theft. Minor’s Mot. to Supp. pg 2. In the afternoon of August 14, 2018, Juvenile
4 alleges that the Police interrogated him after he invoked his right to remain silent and requested a
5 lawyer. *Id.* Due to this continued questioning, Juvenile alleges he made incriminating statements. *Id.*
6 However, at the August 21, 2019 hearing, Sergeant Norris Kwon, the officer who questioned the
7 Juvenile, testified that the Juvenile never requested an attorney and the Juvenile knowingly,
8 intelligibly and voluntarily waived his rights via a constitutional waiver form. *See* Minor’s Mot. to
9 Supp. Hearing, August 21-22, 2019. After Sergeant Kwon’s questioning, the Juvenile was released
10 to his parents in the evening of August 14, 2018. *Id.*

11 **III. LEGAL STANDARD**

12 **A. Fifth Amendment Rights**

13 Criminal defendants have a privilege against self-incrimination. NMI Const. art. I § 5; U.S. Const.
14 amend. V. In order to protect this privilege, suspects must be informed of their constitutional rights
15 before custodial interrogation may begin. *Commonwealth v. Mettao*, 2008 MP 7 at ¶17 (citing
16 *Miranda v. Arizona*, 384 U.S. 436, 445 (1966)). This privilege extends to juveniles. *In re Gault*, 387
17 U.S. 1 (1967). Suspects are deemed to be in "custody" when "they are formally arrested or otherwise
18 deprived of their freedom of action in any significant way." *Id.* "Interrogation" is defined not only as
19 express questioning but also includes statements made by police officers intended to elicit
20 incriminating responses from a suspect. *Mettao*, 2008 MP 7 at ¶17 (citing *Commonwealth v. Yan*, 4
21 NMI 334, 338 (1996) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

22 The privilege against self-incrimination is fulfilled only when a suspect is "guaranteed the right
23 'to remain silent unless he chooses to speak'". *Miranda v. Arizona*, 384 U.S. 436, 460 (1966).
24 Therefore, if a suspect indicates that he wants to remain silent, he has invoked his Fifth Amendment

1 privilege, and interrogation must stop. *Michigan v. Mosley*, 423 U.S. 96, 100 (1975). Police must
2 scrupulously honor a suspect's rights once he has invoked them. *Miranda*, 384 U.S. at 479.
3 Conversely, when a suspect invokes his right to counsel, all questioning related to any crime must
4 stop until the suspect is provided with counsel. *Arizona v. Roberson*, 486 U.S. 675, 677 (1988).

5 A suspect must voluntarily, knowingly, and intelligently waive his rights before any statements
6 made in response to police interrogation may be used against him. *Mettao*, 2008 MP at ¶19. The
7 Commonwealth bears the burden of establishing, by a preponderance of the evidence, that a
8 defendant's waiver was voluntary. *Commonwealth v. Ramangmau*, 4 NMI 227, 235 (1995). A waiver
9 is considered voluntary when it is the "product of a free and deliberate choice rather than intimidation,
10 coercion, or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). A court will look at the totality
11 of the circumstances to determine whether a defendant validly waived his *Miranda* rights. *Mettao*,
12 2008 MP 23 at ¶19 (citing *Ramangmau*, 4 NMI at 235). Relevant circumstances include "the
13 characteristics of the defendant and the details of questioning by the government." *Ramangmau*, 4
14 NMI at 235. Additionally, whether a defendant endured "physical threats of harm, deprivation of
15 sleep or food, lengthy questioning, and psychological persuasion" is taken into consideration. *Id.* at
16 236. The Court also looks at whether the "police knew that the respondent was unusually disoriented
17 or upset at the time of [the] arrest." *Yan*, 4 NMI at 338 (quoting *Innis*, 446 U.S. at 303). Absent
18 coercive police activity, a confession will not be considered involuntary. *Commonwealth v. Cabrera*,
19 4 NMI 240, 246 (1995).

20 **B. Presentment**

21 In the case of *In re Gault*, the United States Supreme Court extended the protection of the Due
22 Process Clause to juveniles. 387 U.S. 1, 31–55 (1967). However, the Court declined to establish
23 procedural requirements for the investigatory phase. *United States v. Doe*, 155 F.3d 1070, 1073
24 (1998) (quoting *In re Gault* with "we are not here concerned with the procedures or constitutional

1 rights applicable to the pre-judicial stages of the juvenile process”). Thus, the United States Supreme
2 Court ultimately left the procedural requirements during the investigatory phase to the legislature.
3 The CNMI Legislature addressed this issue in the Juvenile Justice Act. *See* 6 CMC §5141.

4 Accordingly, an officer may take a juvenile into custody without order of the Court when “he has
5 probable cause to believe that the juvenile has committed an act which would be a misdemeanor or
6 felony if committed by an adult”. 6 CMC §5141(a)(1). Unless it appears to the officer “taking the
7 juvenile into custody that it is contrary to the welfare of society or the juvenile, the juvenile shall be
8 released to the custody of the juvenile's parents upon written promise, signed by such person, to bring
9 the juvenile to the court at a stated time.” 6 CMC §5141(c). A juvenile who is not released “shall be
10 taken forthwith...not later than twenty-four hours, ...before the court for a detention hearing to
11 determine where the juvenile will be placed until the next hearing.” 6 CMC §5141(d).

12
13 **IV. DISCUSSION²**

14 Before the Court turns to Juvenile’s two arguments for this motion, it is important to rule on the
15 credibility between Sergeant Kwon and the Juvenile. The Court finds that Sergeant Kwon is credible
16 in this case. Sergeant Kwon has been with DPS for 15 years; he is well experienced in his job. *See*
17 August 21, 2019 Mot. to Supp. Hearing. Further, the Commonwealth’s Exhibits 1-3 support the
18 credibility of Sergeant Kwon’s testimony. *See* Opp. to Mot. to Supp. Ex. 1-3. With this in mind, the
19 Court now addresses each argument.

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24 ² The Court will not consider Juvenile’s argument pertaining to juveniles being placed at the Department of
Corrections jail facility since it was raised for the first time in Juvenile’s reply brief. *See J.G. Sablan Rock
Quarry, Inc. v. Dep’t of Pub. Lands*, 2012 MP 2 ¶ 43(citations omitted).

1 **A. Fifth Amendment Waiver**

2 The Juvenile argues that the Commonwealth violated his Fifth Amendment rights when Sergeant
3 Kwon questioned him after he invoked his right to counsel. Looking at the totality of the
4 circumstances, the Commonwealth has met its burden by a preponderance of the evidence that the
5 Juvenile did knowingly, intelligibly, and voluntarily waived his *Miranda* rights. Looking at the
6 characteristics of the Juvenile, there is no evidence in the record that indicates he was physically or
7 mentally incapable of understanding his *Miranda* rights or the waiver that was presented to him. The
8 Juvenile read, signed, and acknowledged that he understood the waiver form. *See* Opp. to Mot. to
9 Supp. Ex. 1. While the Juvenile is seventeen (17) years old, this is only one factor to weigh in the
10 Juvenile’s favor for this analysis; however slight or minimal.

11 Additionally, there was no evidence of coercion in this case. The Juvenile did not endure any
12 “physical threats of harm, deprivation of sleep or food, lengthy questioning, and psychological
13 persuasion.” *Ramangmau*, 4 NMI at 236; *See* August 22, 2019 Mot. to Supp. Hearing. Sergeant Kwon
14 interviewed the Juvenile in the Department of Corrections Library with the door open, and the
15 interview took less than an hour. *See* August 21, 2019 Mot. to Supp. Hearing. There is no indication
16 that Sergeant Kwon knew the Juvenile was upset or disoriented during the interrogation or the time
17 of arrest.

18 The Juvenile brought to the Court’s attention his right to have his parents present under 6 CMC
19 §5141(b)(1). While DPS should have better training on this issue to protect Juvenile rights, this does
20 not negate the fact that Juvenile A.T.A.’s parents expressly waived their right to be present during
21 questioning with the signed waiver form in compliance with 6 CMC §5141(b)(2)(iii). Thus, this has
22 no bearing on whether Juvenile waived his Fifth Amendment rights in this case.

23 Taking all these factors into consideration, the Court finds that Juvenile A.T.A. knowingly,
24 intelligibly, and voluntarily waived his rights with the waiver form provided by the police.

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B. Presentment

The Juvenile also argues that the Commonwealth improperly held him without bringing him before a Court within 24 hours in accordance with 6 CMC §5141(d). Looking at the plain interpretation of 6 CMC §5141, the Juvenile was properly released to his parents. The Juvenile was in custody, questioned, and released all within a twenty-four (24) hour period in accordance with 6 CMC §5141(c). Sergeant Kwon decided not to further detain the Juvenile pending charges, thus 6 CMC §5141(d) is not triggered.

V. CONCLUSION

The Court hereby **DENIES** Juvenile’s Motion to Suppress Evidence.

IT IS SO ORDERED this 1st day of October, 2019.

/s/
ROBERTO C. NARAJA
Presiding Judge