

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

COMMONWEALTH OF THE NORTHERN, MARIANA ISLANDS,	)	Traffic Case No. 98-6355
	)	
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
FELIX U. PALACIOS,	)	
	)	
Defendant.	)	
	)	

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**I. PROCEDURAL BACKGROUND**

This matter came on for a bench trial on June 2, 1999, in Courtroom D at 1:30 p.m. Assistant Attorney General Elaine A. Paplos, Esq. appeared on behalf of the Commonwealth. Antonio M. Atalig, Esq. appeared on behalf of the Defendant, Felix U. Palacios. 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 David Hosono testified that on August 21, 1998, he was dispatched to the scene of a single-vehicle accident at Beach Road, Chalan Piao. Upon arriving at the scene, Officer Hosono observed that a motor vehicle had sustained significant damage after colliding with a tree in the median area of Beach Road. Officer Hosono then observed Defendant sitting in front of Sablan Hardware holding a blood-stained cloth to his forehead. Officer Hosono approached Defendant and inquired whether he was the driver of the damaged vehicle. Defendant admitted that he was the driver. Officer Hosono inquired whether Defendant needed some [p. 2] medical assistance. Defendant requested assistance. Officer Hosono then contacted paramedics who arrived at the scene shortly thereafter and removed

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Defendant to the Commonwealth Health Center (CHC).

Officer Hosono followed Defendant to CHC and met with him after Defendant received medical attention for his injury. Defendant received twenty-one stitches to close a cut on his forehead. Officer Hosono testified that he observed a “strong odor of alcohol” on Defendant’s breath as he spoke with him. Officer Hosono then inquired whether Defendant had been drinking and Defendant admitted that he had consumed “two or three cans of Budweiser” earlier that evening. Officer Hosono then informed Defendant of the Commonwealth’s implied consent law and requested that Defendant submit to an alcohol blood test. Defendant refused to submit to an alcohol blood test and indicated such refusal on the implied consent form. Officer Hosono then issued a citation to Defendant for alleged: (1) Reckless Driving, in violation of 9 CMC § 7104; (2) Driving Under the Influence, in violation of 9 CMC § 7105; and (3) Refusal to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106.

Defendant was not arrested and was not informed of his constitutional rights. Defendant was not detained, but rather, was released into the custody of a relative.

On June 2, 1999, the matter came before the Court for a bench trial. The Court found, after considering the testimony and evidence presented, that the Government presented sufficient evidence to find Defendant guilty as to: (1) Reckless Driving, in violation of 9 CMC § 7104; (2) Driving Under the Influence, in violation of 9 CMC § 7105; and (3) Refusal to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106. The Court was concerned, however, with the fact that Defendant was never formally placed under arrest. As such, the Court ordered the parties to submit memoranda on the issue of whether a conviction may be sustained where a defendant is only issued a citation and is not formally arrested.

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### **III. ISSUE**

1. Whether a conviction for Driving Under the Influence, Reckless Driving, and Refusal to Submit to an Alcohol Breath Test may be sustained where Defendant was issued a traffic citation but was not formally arrested nor informed of his constitutional rights.

#### IV. ANALYSIS

Conviction of a defendant without a formal arrest is permissible provided that the testimony and evidence presented were obtained in a constitutionally permissible manner.

In the present matter, Defendant was never formally arrested and was never informed of his 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). The pivotal question in the present matter, therefore, is whether Officer Hosono's inquiries at the scene of the accident and at the hospital amounted to a "custodial interrogation." In determining 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 whether the atmosphere was "police dominated." Id.

In the present matter, Officer Hosono approached Defendant after he observed that Defendant was sitting near the scene of the accident holding a blood-stained cloth to his forehead. Officer Hosono never attempted to restrain Defendant, but rather inquired as to his condition and whether Defendant required medical attention. 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 nor that the atmosphere was "police dominated."

[p. 4] Furthermore, custodial interrogation is distinguished from routine investigative information gathering. "General 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 (Supreme Court of Conn. 1974), citing Miranda v. Arizona, supra. In State v. Szabo, a police officer questioned a defendant involved in a single-vehicle accident as the defendant was being transported to a hospital by ambulance. The defendant admitted to

being the driver of the vehicle, which was later discovered to be stolen. The court held that the officer's inquiries did not amount to custodial interrogation and therefore the defendant's Fifth Amendment privilege against self-incrimination was not violated. *Id.*

In the present matter, Officer Hosono's inquiries were related to his investigation of the accident and to Defendant's medical condition. Although Defendant admitted to being the driver of the damaged vehicle, such general on-the-scene questioning in the fact-finding process of an accident investigation does not amount to custodial interrogation. Therefore, the Court finds that the evidence and testimony regarding Defendant's admission that he was the driver of the damaged vehicle was obtained in a constitutionally permissible manner.

Officer Hosono spoke with Defendant again at the hospital after Defendant received medical attention for the laceration on his forehead. Officer Hosono testified as he spoke with Defendant he detected a "strong odor of alcohol" on Defendant's breath. Officer Hosono then asked whether Defendant had been drinking and Defendant admitted that he had consumed "two or three cans of Budweiser" earlier that evening. In Tilley v. Texas, the court held that a motorist's admission that he had "about 3 six-packs of beer and some wine" was admissible even though the officer did not inform the motorist of his constitutional rights as set forth in Miranda. 462 S.W.2d 594 (Tex. Crim. App. 1971). The court held that the motorist's admission was admissible because it was made in response to an investigatory question and was not accusatorial or custodial in nature. *Id.* In the present matter, Defendant's admission to having consumed "two or three cans of Budweiser" was in response to Officer Hosono's continuing investigation of the accident. Therefore, the Court finds that the [p. 5] evidence and testimony regarding Defendant's admission that he had been drinking was obtained in a constitutionally permissible manner.

## V. CONCLUSION

The Court finds that Defendant's admission that he had been driving on the evening of August 21, 1998, and Defendant's admission that he had been drinking were not the product of a custodial interrogation. As such, the Court finds that the testimony and evidence presented were obtained in a constitutionally permissible manner.

The Court finds that the Government presented 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. As such, it is hereby Ordered, Adjudged and Decreed that Defendant Felix U. Palacios is **GUILTY** of the offense of Reckless Driving in violation of 9 CMC § 7104.

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 Felix U. Palacios 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 showing that Officer Hosono had reasonable grounds to believe that Defendant was operating a motor vehicle under the influence of alcohol. As such, it is hereby Ordered, Adjudged and Decreed that Defendant Felix U. Palacios is **GUILTY** of the offense of Refusing to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106.

Sentencing is hereby set for July \_\_\_\_, 1999 at 9:00 a.m.

So ORDERED this 28 day of June, 1999.

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