

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

COMMONWEALTH OF THE NORTHERN,  
MARIANA ISLANDS,

Plaintiff,

vs.

SERGIO L. INABANGAN

Defendant.

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Criminal Case No. 98-0248

**ORDER DENYING MOTION TO  
SUPPRESS AND DENYING  
MOTION FOR DISCOVERY**

**I. INTRODUCTION**

This matter came before the Court on September 22, 1999, at 9:00 a.m. in Courtroom 223 on Defendant's motion to suppress and motion for discovery. Assistant Attorney General Nicole C. Forelli, Esq. appeared on behalf of the Commonwealth. Assistant Public Defender Robert T. Torres, Esq. appeared on behalf of the Defendant, Sergio L. Inabangan. The Court, having reviewed the memoranda, declarations and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision. [p. 2]

**II. FACTS**

On July 12, 1998, Department of Public Safety (DPS) Officer Jesus Cepeda responded to a call in Kannat Tabla regarding a reported stabbing incident near the barracks of North Pacific Builders, Inc. Officer Cepeda arrived at the scene at approximately 1:00 a.m. in the morning and arrested Defendant for alleged aggravated assault. Defendant was detained pending investigation of the incident and at approximately 6:00 p.m. that evening was interviewed at the Criminal Investigation Bureau by DPS Detectives Eddie Chen and Jose Cepeda.

Prior to the commencement of the interview, Detective Chen advised Defendant of his constitutional rights. Defendant was also presented with a Constitutional Rights form, which

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Defendant signed and whereby he waived his constitutional right to have counsel present during the interview.

Detective Chen testified that he advised Defendant of his right to contact the Philippine Consulate before being interviewed. Defendant, however, claims that he was never informed by either Detective Chen or Detective Cepeda of his right to communicate with the Philippine Consulate.

### **III. ISSUES**

1. Whether the Court shall grant Defendant's motion to suppress on the grounds that Defendant was arrested, detained, and interviewed without being informed of his right to communicate with the Philippine Consulate as required by Article 36(1)(b) of the Vienna Convention.

2. Whether the Court shall grant Defendant's motion for discovery pursuant to Com. R. Civ. P. 16.

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### **IV. ANALYSIS**

#### **A. Motion to Suppress.**

Defendant argues that the statements made during an interview with Detectives Chen and Cepeda should be suppressed on the ground that he was not informed of his right to contact the Philippine Consulate as required by Article 36(1)(b) of the Vienna Convention. The Commonwealth, however, contends that Detective Chen did inform Defendant of his right to contact the Philippine Consulate prior to the initiation of the interview. The Court finds the testimony of Defendant to be credible and bases the following analysis on the factual finding that Defendant was not informed of his right to contact the Philippine Consulate.

“Article 36 of the Convention requires a detaining state to inform a detained foreign national of his right to consult with consulate officials.” *Villafuerte v. Stewart*, 142 F.3d 1124, 1125 (9<sup>th</sup> Cir. 1998). “It also requires the detaining state, if requested by the prisoner, to inform

consular officials of the arrest and detention, and to allow consular officials to visit and consult with the prisoner.” *Id.*

Article 36(1)(b) of the Convention states:

**[I]f he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody, or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.**

Vienna Convention on Consular Relations, April 24, 1963, [1970] 21 U.S.T. 77, T.I.A.S. No. 6820 (emphases added).

The United Nations adopted the Vienna Convention in April 1963, and the United States and the Philippines are signatories. *See* Vienna Convention on Consular Relations. April 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820. The Convention applies in the Northern Mariana Islands pursuant to Article I, § 102 of the Covenant, which states that “together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana islands, will be the supreme law of the Northern Mariana Islands.” COVENANT TO ESTABLISH A COMMONWEALTH [p. 4] OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1601 note, *reprinted in* Commonwealth Code at B-101 et seq.

The Court finds that the failure to inform Defendant of the right to communicate with the Philippine Consulate was in violation of Article 36(1)(b) of the Vienna Convention. The question remains, however, as to the appropriate remedy for such a violation as “the Vienna Convention itself prescribes no judicial remedy or other recourse for its violation . . . .” *United States v. Ademaj*, 170 F.3d 58, 67 (1<sup>st</sup> Cir. 1999).

Defendant argues that the appropriate remedy is the suppression of the statements made during the interview with Detectives Chen and Cepeda. Defendant cites the Ninth Circuit decision in *United States v. Lombera-Camorlinga*, for the proposition that suppression may be an appropriate remedy for a violation of Article 36(1)(b). In that case the Ninth Circuit

indicated that an arrested national could properly enforce Article 36(1)(b) by moving, pretrial, to suppress statements made to his arresting officers on the grounds that he was not first advised of his right to contact the consul for assistance. *See United States v. Lombera-Camorlinga*, 170 F.3d 1241 (9<sup>th</sup> Cir. 1999). The *Lombera-Camorlinga* opinion, however, was subsequently withdrawn by the Ninth Circuit pursuant to an order that the case be reheard by the court *en banc*. *See United States v. Lombera Camorlinga*, 188 F.3d 1241 (9<sup>th</sup> Cir. 1999). Furthermore, as noted in *United States v. Alvarado-Torres*, “[*Lombera-Camorlinga*] did not expressly discuss whether, assuming the defendant could demonstrate prejudice, suppression would be the appropriate remedy.” *United States v. Alvarado-Torres*, 45 F.Supp.2d 986, 989 (S.D.Cal. 1999). Also, a Federal District Court has held that suppression is not an appropriate remedy for a violation of Article 36(1)(b) of the Vienna Convention. *See United States v. Carrillo*, 1999 WL 825318, at 7 (N.D. Ill. Oct. 14, 1999).

Even if suppression were an appropriate remedy, Defendant would carry the initial burden of showing that he suffered prejudice from a violation of Article 36(1)(b). *See Alvarado-Torres, supra*, at 990. A foreign national establishes prejudice “where he shows that he did not know of his right to consult with consular officials, that he would have availed himself of that right had he known of it, and that there was a likelihood that the contact would have resulted in assistance to him . . . .” [p. 5] *United States v. Rangel-Gonzales*, 617 F.2d 529, 533 (9<sup>th</sup> Cir. 1980).

Defendant argues that he suffered prejudice in that potentially incriminating statements were made during the interview with Detectives Chen and Cepeda and that he would not have consented to the interview had he had been informed of his right to contact with the Philippine Consulate.

The Court finds, however, that Defendant did not meet his burden of producing evidence that Defendant would have availed himself of his right to contact the Philippine Consulate had he known of such right. Further Defendant failed to show that that there was a likelihood that the contact would have resulted in assistance to him. As such, suppression of Defendant’s statements is not appropriate and Defendant’s motion to suppress is **DENIED**.

B. Motion for Discovery.

Defendant requests that the Commonwealth provide the following discovery materials: (1) written or recorded statements by Defendant, specifically the tape-recording of the interview held on July 12, 1998; (2) all documents and tangible objects, including papers, documents, photographs, and other materials in the custody of the Commonwealth; (3) Defendant's responses to *Miranda* warnings; (4) contradictory statements of witnesses; (5) *Brady* Material; (6) threats, deals, promises or inducements to government witnesses; (7) criminal record, if any, of Defendant; (8) reports of examination and tests; and (9) law enforcement witness personnel files. The Court noted that the Commonwealth has provided in excess of fifty pages of discovery materials, including:

(1) the Defendant's recorded statement; (2) all documents and tangible objects, including papers, documents, photographs, and other materials in the custody of the Commonwealth; (3) Defendant's responses to *Miranda* warnings; (4) witness statements; and (5) *Brady* material.

Furthermore, the Commonwealth indicated that it will provide further discovery if it becomes available. As such, the Court finds that Defendant is not entitled to additional discovery except that which is required under the continuing obligation of the Commonwealth to produce discoverable material. Therefore, Defendant's motion for production of additional discovery is **DENIED.**

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**V. CONCLUSION**

For the foregoing reasons, the Court finds that even if suppression were an appropriate remedy that Defendant did not meet his burden of producing evidence that Defendant would have availed himself of his right to contact the Philippine Consulate had he known of such right that he failed to show that such contact would have resulted in assistance to him. As such, suppression of Defendant's statements is not appropriate and Defendant's motion to suppress is **DENIED.**

The Court notes, however, that Article 36(1)(b) of the Vienna Convention applies in the Commonwealth of the Northern Mariana Islands and mandates that competent authorities of the

Commonwealth shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Moreover, any communication addressed to the consular post by the person arrested, in prison, custody, or detention shall also be forwarded by the said authorities without delay. Furthermore, the said authorities shall inform the person concerned without delay of his rights under Article 36(1)(b) of the Vienna Convention to contact the consular post of that person's State.

Furthermore, the Court finds Defendant is not entitled to additional discovery except that which is required under the continuing obligation of the Commonwealth to produce discoverable material. Therefore, Defendant's motion for production of additional discovery is **DENIED**.

So ORDERED this 2 day of December, 1999.

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