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SUPERIOR COURT  
OF GUAM

**IN THE SUPERIOR COURT  
OF GUAM**

THE PEOPLE OF GUAM,

CRIMINAL CASE No. CF0421-15

v.

**DECISION AND ORDER**

MARK A. TORRE, JR.,

Defendant.

**STATEMENT OF THE CASE**

Subsequent to its January 27, 2016, evidentiary hearing on Defendant's motion to suppress evidence this matter was taken under advisement on February 8, 2016. The People are represented by Assistant Attorney General Phillip J. Tydingco. Defendant is represented by attorney Joaquin C. Arriola. Having reviewed the memorandum and papers presented, the Court now issues the following decision denying Defendant's request.

On July 24, 2015, an indictment was filed charging the Defendant with: 1) Murder, as a First Degree Felony, with a Special Allegation of Possession or Use of a Deadly Weapon in the Commission of a Felony; 2) Manslaughter, as a 1st Degree Felony, with a Special Allegation of Possession or Use of a Deadly Weapon in the Commission of a Felony; 3) Aggravated Assault, as a Second Degree Felony, with a Special Allegation of Possession or Use of a Deadly Weapon

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1 in the Commission of a Felony; and 4) Aggravated Assault, as a Third Degree Felony, with a  
2 Special Allegation of Possession or Use of a Deadly Weapon in the Commission of a Felony.

3 Defendant filed his memorandum in support of his motion to suppress on February 5,  
4 2016. The People filed its memorandum in opposition on February 5, 2016.  
5

### 6 ISSUES

- 7 1. Whether the questions posed and intimated by the Guam Police Department upon Defendant  
8 were incriminating.
- 9 2. The nature of the circumstances surrounding the statements elicited by Defendant.
- 10 3. Whether a reasonable person would have felt free to terminate Defendant's early morning  
11 encounter with the Guam Police Department.
- 12 4. Whether there was a formal arrest or restraint upon freedom of movement to the same  
13 degree associated with a formal arrest.  
14

### 15 FACTS<sup>1</sup>

- 16 1. In the early morning hours of July 13, 2016, at approximately 2:15 a.m., numerous  
17 members of the Guam Police Department, which at a minimum included 4 patrol cars and  
18 nine police officers, responded to an assignment to go to Defendant's home to investigate a  
19 shooting.  
20
- 21 2. The officers were informed that Officer Bert Piolo was shot in the chest and Officer Mark  
22 Torre (hereafter Defendant) was with him.
- 23 3. Upon arrival the road leading to Defendant's home was blocked and a perimeter around the  
24 home was established to monitor and regulate access to the area.  
25
- 26 4. Upon encountering Defendant and Officer Piolo, Officer Edwards was assigned to assist  
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1 and interact with Defendant. Initially and briefly Officer Flores also interacted with  
2 Defendant.

3 5. During and prior to this assignment Officer Edwards was wearing body camera. When  
4 powered the camera's audio does not begin to record until approximately 30 seconds after  
5 the video begins recording.  
6

7 6. At the time of the assignment to Defendant, the battery on the body camera was running  
8 low. Because of this Officer Edwards occasionally turned the camera off when he was not  
9 talking to the Defendant.  
10

11 7. Officer Edwards' entire recorded interaction with Defendant lasted 49 minutes. The  
12 approximate unrecorded time was 6 minutes. During the interaction Defendant is never  
13 handcuffed, searched, patted down, advised of his *Miranda* rights or arrested.

14 8. The interaction between Officer Edwards and Defendant commences with each assisting  
15 the medical personnel with the transportation of Officer Piolo.  
16

17 9. After Officer Piolo is taken by the medical personnel, a seat is provided for Defendant on  
18 the tailgate of a pickup truck by his father. Defendant sits on the tailgate for the near  
19 entirety of the interaction.  
20

21 10. During the interaction between Officer Edwards and the Defendant, Defendant often makes  
22 expressions of disbelief, shock and emotional and physical pain. It also appears that his  
23 equilibrium is not steady as he occasionally sways from his seat.

24 11. Frequently during the recorded interaction Officer Edwards places his hands on  
25 Defendant's shoulders and arms. It is clear from the interaction that the purpose of Officer  
26 Edwards' gestures are to comfort and support and are not to restrain or impede Defendant's  
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28 <sup>1</sup> The Court recognizes that within its description of the facts as it finds them, are several of its

1 conscious choices.

2 12. Officer Edwards asks Defendant numerous times during the interaction to describe the  
3 shooting and its surrounding circumstances the majority of the time Defendant does not  
4 respond or appear to acknowledge the questions.  
5

6 13. Occasionally during the interaction Defendant also interacts with family members both in  
7 private and in the presence of the other Guam Police Officers.

8 14. The People assert that during the interaction the following statements were made by  
9 Defendant:  
10

11 a. Officer Flores asks if the shot happened in the truck and Defendant shakes his head no.

12 b. Officer Flores asks if the shot happened outside the truck and Defendant shakes his head  
13 no.

14 c. Officer Flores asks if the wound was self-inflicted and Defendant nods yes.

15 d. Outside of a response to any question Defendant states "It's my fault."  
16

17 Outside of a response to any question Defendant mentions that the involvement of a  
18 girlfriend prompted the shooting.

19 e. Outside of a response to any question Defendant complains of chest pains.

20 f. Outside of a response to any question Defendant states Officer Piolo was not even a  
21 threat.  
22

23 g. Outside of a response to any question Defendant states he has "no ill will . . . against that  
24 brother right there," referring to Officer Piolo.

25 h. Referring to a prior comment about a girlfriend Officer Edwards asks what happened and  
26 Defendant responds, "they weren't even an item."  
27  
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conclusions. It notes this is done to add continuity to its decision herein.

1 i. Officer Edwards asks Defendant whether Defendant's gun is a 27 and Defendant nods  
2 yes and states "uh huh."

3 15. During the video Officer Edwards and Officer Flores make the following statements as they  
4 are discussing the investigation among themselves and with other officers,  
5

6 a. Something about a girlfriend appeared to prompt the shooting.

7 b. Apparently someone, maybe Officer Piolo, was chasing someone, maybe Defendant,  
8 around the vehicle because there were blood trails around Officer Piolo's truck.

9 c. Officer Edwards did not believe Defendant was involved in the shooting of Officer  
10 Piolo, rather he thought it was the result of a firefight involving police officers and other  
11 suspects.  
12

13 16. The interaction between Defendant and the Guam Police ends with Defendant being  
14 transported by ambulance to Guam Naval Hospital. Guam Police Officers did not  
15 accompany Defendant to the hospital. Guam Naval Hospital Medics departed with  
16 Defendant at 3:34 a.m.  
17

18 17. The two officers that interacted primarily with Defendant during the time period described  
19 above where family friends and relatives of the Defendant and his family.

20 18. Defendant was arrested around 7:45 p.m. on July 13, 2015.  
21

22 19. On July 13, 2015, Officer Edwards downloaded the unaltered interaction from his body  
23 camera onto a disk and thumb drive which he provided to the Guam Police Department and  
24 the U.S. Federal Bureau of Investigation. The unaltered files are still on Officer Edwards'  
25 body camera which was provided to the Guam Police Department on July 15, 2015.  
26

27 20. The Guam Police Department has no rules or regulations regarding a police officer's use of  
28 a body camera.

1 21. On July 14, 2015, after the above described interaction Officer Flores learned that during a  
2 911 call Officer Piolo said, “he shot me.”

### 3 PRINCIPLES OF LAW

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5 In 2007 the Guam Supreme Court re-emphasized that “[g]enerally, statements elicited  
6 by law enforcement officials while a defendant is in custody must be preceded by *Miranda*  
7 warnings or they are inadmissible.” *People of Guam v. Farata*, 2007 Guam 8 ¶ 20 (citations  
8 omitted). In the same decision it further held “that an individual is in custody when he or she is  
9 ‘taken into custody or otherwise deprived of his freedom of action in any significant way.’” *Id.* at  
10 ¶ 23 (citations omitted). As outlined by the U.S. Supreme Court there are several inquiries a  
11 court is to review when deciding questions of custody,  
12

13 The first inquiry is, what were the circumstances surrounding the interrogation.  
14 The second inquiry is given those circumstances, would a reasonable person have  
15 felt he or she was not at liberty to terminate the interrogation and leave. After  
16 addressing the two inquiries, the court must then resolve the ultimate inquiry,  
17 which is [was] there a formal arrest or restraint on freedom of movement of the  
18 degree associated with a formal arrest.

19 *Id.* (citations omitted). Discussing the order of review the Guam Supreme Court instructed,  
20 “Before considering the surrounding circumstances, the next issue this court must consider is  
21 whether [the Defendant] was interrogated.” *Id.* at 35. Saliently the Court next defined  
22 interrogation as follows:

23 An interrogation is said to occur when the defendant, in custody, is the target of  
24 questions or statements, which the police can expect will elicit incriminating  
25 responses. . . . [T]he term ‘interrogation’ under *Miranda* refers not only to  
26 express questioning, but also to any words or actions on the part of the police  
27 (other than those normally attendant to arrest and custody) that the police should  
28 know are reasonably likely to elicit an incriminating response. An incriminating  
response is any response-whether inculpatory or exculpatory-that the prosecution  
may seek to introduce at trial.

*Id.* at 36. (citations omitted).

1 ANALYSIS

2 Defendant requests that the Court suppress the body camera recordings, all statements,  
3 and any reference to any statements, that he made or that were produced during his early  
4 morning, July 13, 2015, interaction with Guam Police Officers. Mot at 1-18. The People  
5 oppose this request. Opp. at 1-24. In support of their positions both the Defendant and the  
6 People outline a description of the facts elicited during the hearing herein and argue in favor of  
7 their respective positions.  
8

9 To begin its analysis the Court will first, as instructed in *Farata*, examine the  
10 incriminating nature if any of the questions asked of Defendant by the Guam Police officers.  
11 *People of Guam v. Farata*, 2007 Guam 8 ¶¶ 35-36. Specifically the Court must objectively  
12 analyze if, the questions and behavior of the Guam Police were reasonably likely to elicit a  
13 “response-whether inculpatory or exculpatory-that the prosecution may seek to introduce at  
14 trial.” *Id.* at ¶ 36. Given the broad sweep of this standard it is difficult for the Court to imagine  
15 any scenario where a police officer’s questions would not fall within the Guam Supreme  
16 Court’s definition of incriminating. *Id.* Here the officers’ questions, both verbalized and  
17 intimidated by their official presence at the scene were objectively and reasonably likely to elicit  
18 responses which were admissible at trial. In addition to the questions on their face, further  
19 salient facts which support this finding are the number of officers at the scene, the Guam Police  
20 Department’s regulation of access to the road and area surrounding the Defendant and the  
21 Defendant’s house, and the intimidated supervisory control of the actions of persons within the  
22 established perimeter.  
23

24 Second the Court must examine the perceptibly more narrow question of, “given those  
25 circumstances, would a reasonable person have felt he or she was not at liberty to terminate the  
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1 interrogation and leave.” *Id.* at 23. Here the Court is persuaded that a reasonable person would  
2 have felt free to terminate the Guam Police Officers’ interaction. *Id.* Of particular import to this  
3 finding are the following facts and conclusions:  
4

- 5 1. The lack of restricted access to Defendant by the officers as he communicated in private and  
6 public with his father, his wife and his family as well as emergency medical personnel;<sup>2</sup>
- 7 2. Outside of demonstrations of support and comfort, the lack of any physical restraints upon  
8 Defendant’s movement;
- 9 3. Defendant’s and his family’s experience and training as law enforcement officers;
- 10 4. Officer Edwards and Officer Flores’ familial and fraternal relationship with Defendant;
- 11 5. The supportive rather than investigative demeanor of the officers questions and presence; and
- 12 6. The lack of any assigned monitor when the Defendant was transferred to the Hospital.

13  
14 Given the above the Court is unable to find that Defendant freedom of movement was restrained  
15 to “the degree associated with a formal arrest.” *Id.*<sup>3</sup>  
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25 <sup>2</sup> In weighing this factor the Court notes the U.S. Supreme Court’s discussion of a person’s  
26 reasonable expectation during a traffic stop and the relative applicability of *Miranda*, *Berkemer v.*  
*McCarty*, 468 U.S. 420, 438 (1984).

27 <sup>3</sup> Defendant argues without identifying or analyzing any legal authority that the body camera  
28 evidence should be suppressed for the Guam Police Departments failure to promulgate any rules  
regarding the use of this technology. While noted the argument is not addressed by the Court  
because of its insufficiency.

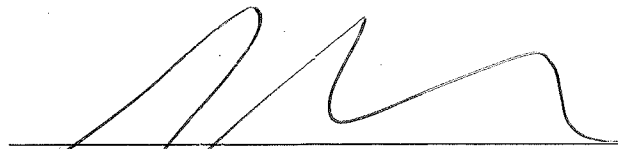


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**CONCLUSION AND ORDER**

Based on the foregoing, Defendant's request to suppress is denied. Further proceedings in this matter are set for April 22, 2016 at 9:00 a.m. to schedule the trial date.

SO ORDERED, this 30<sup>th</sup> day of March 2016.

  
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HONORABLE MICHAEL J. BORDALLO  
Judge, Superior Court of Guam

**SERVICE VIA COURT BOX**

I acknowledge that a copy of the original hereto was placed in the court box of:



Date: 3/30/16 Time: 9:20am

  
Deputy Clerk, Superior Court of Guam