

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, \*

Plaintiff, \*

vs. \* CRIMINAL NO. 00-000

DEFENDANT \*

Defendant. \*

\* \* \* \* \*

**MOTION TO SUPPRESS STATEMENTS**

TO THE HONORABLE CARMEN C. CEREZO  
UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF PUERTO RICO

COMES NOW defendant, represented by the Federal Public Defender, and hereby PLEADS  
and ALLEGES:

**I INTRODUCTION**

Defendant is charged with possessing with intent to distribute more than 5 kilograms of cocaine. Before, during and after his arrest, Mr. Defendant was interrogated in a custodial situation as defined by *Miranda v. Arizona*, 384 US 436 (1966) and its progeny. This interrogation was performed by D.E.A. task force agents without advising the defendant of his rights. Defendant now moves to suppress those statements.

**II TESTIMONY EXPECTED FROM THE GOVERNMENT'S AGENTS**

Defendant expects the government's evidence<sup>1</sup> to show that on July 10, 1999, task force agent (TFA) was called by an source of information (SOI) at Ground Motive Dependable (GMD),

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<sup>1</sup> The expected testimony here presented is a compilation made from the different documents provided by the Government during discovery proceedings.

a company which provides ground services for Tower Air at the Luis Muñoz Marin International Airport, Carolina, Puerto Rico. The SOI advised TFA that while monitoring flight 50 en route to New York, the SOI observed, considered suspicious and detained a black suitcase. On his own the GMD security personnel opened the suitcase and saw five rectangular packages inside, which he suspected was drugs. At that time task force agents were called to the Tower Air ticket counter, and interviewed the SOI, who showed them the black suitcase which was opened in their presence. TFA observed five rectangular packages that appeared to be cocaine. The agents assumed custody of the suitcase.

After unsuccessfully trying to identify the owner of the suitcase among the airplane's passengers, TFA told TFA2 that GMD employees had observed another employee, later identified as defendant, attempting to place a black suitcase on the Tower Airlines carousel. The supervisor of that work area did not accept the suitcase. Later GMD employees observed Defendant placing the suitcase at the Tower Air ticket counter.

TFA and TFA2 identified Defendant via his Port Authority ID. TFA identified himself and asked to speak with defendant, to which he agreed. Defendant was asked if he attempted to put any luggage into the Tower Airline carousel. Defendant responded yes. TFA then asked Defendant to accompany him to the DEA office, located at the Airport, and Defendant agreed

At the DEA office, TFA and four other agents interviewed Defendant, and entered into an extensive interrogation concerning his job duties, his version of the events, and he was asked to identify the suitcase. After this interrogation was ended, TFA then placed Defendant under arrest. It was at that moment that TFA read Defendant his Miranda warnings.

### III INADMISSIBILITY OF STATEMENTS

“Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make, may be used a evidence against him, and that he has a right to the presence of an attorneys, either retained or appointed.” *Miranda vs. Arizona*, supra. The essence of *Miranda* is that custodial interrogations are inherently coercive. Therefore, the prosecution may not use statements obtained from custodial interrogations unless procedural safeguards guarantee that the accused has been informed of, and freely waived, the constitutional privileges of the Fifth and Sixth Amendments.

The essential controversy is if the interrogation of Mr. Defendant was performed in a custodial setting that triggered the necessity that *Miranda* warnings be given before the interrogation began. The First Circuit directly addressed this issue in *U.S. v. Fernández Ventura*, 85 F. 3d. 708 (1st Cir. 1996)<sup>2</sup>. In that case the Court stated<sup>3</sup>:

“*Miranda* warnings must be given before a suspect is subjected to custodial interrogation. *United States v. Taylor*, 985 F.2d 3, 7 (1st Cir.1993). **The custodial interrogation inquiry necessarily demands determination of its two subsidiary components: 1) custody and 2) interrogation.** See *Illinois v. Perkins*, 496 U.S. 292, 297, 110 S.Ct. 2394, 2397-98, 110 L.Ed.2d 243 (1990) (“It is the premise of *Miranda* that the danger of coercion results from the interaction of custody and official interrogation.”).

The custody determination is the initial and, generally, the central inquiry: it is “the touchstone to the need for *Miranda* warnings.” *United States v. Quinn*, 815

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<sup>2</sup> This case was later re-visited by the Court of Appeals in *US vs. Fernández Ventura*, 132 F. 3d. 844 (1st. Cir., 1998). However, the second’s Opinion does not modify the substantive holdings of the first Opinion.

<sup>3</sup> *U.S. v. Fernández Ventura*, supra, starting at 710. Footnotes deleted, emphasis provided.

F.2d 153, 160 (1st Cir.1987). Since *Miranda*, the Court has enunciated several general definitions of custody, but **the ultimate inquiry is whether there was "a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest."** *Thompson v. Keohane*, 511 U.S. 318, ----, 116 S.Ct. 457, 465, 133 L.Ed.2d 383 (1995) (quotation marks and citations omitted); *Stansbury v. California*, 511 U.S. 318, ----, 114 S.Ct. 1526, 1529, 128 L.Ed.2d 293 (1994) (per curiam ) (same).

In order to assess the "restraint on freedom of movement," a court must examine all the circumstances surrounding the interrogation. **This test is objective: the only relevant inquiry is "how a reasonable man in the suspect's shoes would have understood his situation."** *Stansbury*, 511 U.S. at ----, 114 S.Ct. at 1529 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151-52, 82 L.Ed.2d 317 (1984)). **The subjective beliefs held by the interrogating officers or the person being interrogated are not germane.**

**Relevant circumstances include "whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation."** *United States v. Masse*, 816 F.2d 805, 809 (1st Cir.1987) (quoting *United States v. Streifel*, 781 F.2d 953, 961 n. 13 (1st Cir.1986)). This is not an exhaustive list. Other courts have identified other factors significant to a custody determination. See *Sprosty v. Buchler*, 79 F.3d 635, 641 (7th Cir.1996) (citing cases).

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The other component of custodial interrogation is, of course, interrogation. Interrogation refers to both express questioning and its "functional equivalent," which includes "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.." *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689-90, 64 L.Ed.2d 297 (1980) (footnotes omitted). Again the inquiry is objective: how would the officer's statements and conduct be perceived by a reasonable person in the same circumstances? See *Taylor*, 985 F.2d at 7. Here, quite clearly, if defendants were in custody, the officers' express questions constituted interrogation.

In applying the holding of *Fernández Ventura* to this case it must first be examined if the interrogation occurred in a custodial setting. The facts in this case, when examined against the

relevant circumstances, i.e. "whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation", all militate to believe that this was an interrogation held in a custodial setting against a target with the specific purpose of obtaining a confession. Mr. Defendant was removed from the "public" area of the airport and taken to the D.E.A. office there, which certainly are not familiar or neutral settings. He was relieved of his airport employee identification, limiting his movements within the secured area he was in. He was questioned inside a small room with a total of five agents, which create a coercive ambiance in the interrogation room. Mr. Defendant was questioned extensively on case specifics, at a time when he was already considered a suspect and the investigation was directed against him. The character of the questioning was not investigative and was definitively made to elicit a confession from the defendant.

In the present case the statements made by Mr. Defendant to task force agents were obtained before the defendant was notified of his constitutional rights. Although the Government will argue that Defendant went voluntarily to the D.E.A. offices, and he was told that he was not under arrest, the fact is that the totality of the circumstances pointed to the fact that any reasonable person, in similar circumstances, would believe that he was under arrest. There was no voluntariness to his statements.

The second tier of the analysis is whether there was in fact an interrogation. The concept is defined as "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating

response from the suspect.” Certainly the direct questioning of the defendant, who was the target of the investigation at the time, within the D.E.A. offices on the specifics of the case must qualify as an interrogation. As can be discerned from the expected evidence of the Government, the questions were directed, and did obtain, specific answers concerning the participation of defendant in the events. They were not, in any conceivable manner, general undirected questions.

#### **IV CONCLUSION**

WHEREFORE, Defendant prays this Honorable court to set the motion for pretrial evidentiary hearing, and thereafter suppress all statements made by the defendant in violation of his constitutional rights as defined by *Miranda* and its progeny.

RESPECTFULLY SUBMITTED.

JOSEPH C. LAWS, JR.  
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For the District of Puerto Rico

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**CERTIFICATE OF SERVICE**

I CERTIFY that on September 13, 2001, I served a copy of the foregoing *Motion To Suppress Statements* on counsel for the government, U.S. Attorney Guillermo Gil Bonar (att: Assistant U.S. Attorney Rose Vega) by delivering it to his office at Federico Degetau Federal Building, Room 452, Criminal Division, 150 Carlos Chardón Avenue, San Juan, PR 00918.

In San Juan, Puerto Rico, this September 13, 2001.

Assistant Federal Public Defender