

**IN THE
COURT OF COMMON PLEAS
REPUBLIC OF PALAU**

REPUBLIC OF PALAU,
Plaintiff,
v.
RENATO CAYETANO,
Defendant.

Cite as: 2020 Palau 32 (C.C.P.)
Criminal Case No. 20-034

Decided: June 23, 2020

Counsel for Plaintiff Laisani Tabuakuro, AAG
Counsel for Defendant Repeka Varasikete, Asst. Public Defender

BEFORE: HONORA E. REMENGESAU RUDIMCH, Senior Judge.

**DECISION AND ORDER GRANTING DEFENDANT’S MOTION
TO SUPPRESS¹**

INTRODUCTION

[¶ 1] Before the Court is defendant Renato Cayetano’s (“Cayetano”) motion seeking suppression of all evidence from the sobriety checkpoint on December 24, 2019 that resulted in the arrest of Cayetano. Cayetano argues the stop violated his right under Article IV, Section 4 of the Palau Constitution to be free against searches and seizures because there was no probable cause to stop him in the first place. The Republic filed its Response opposing Cayetano’s motion stating Cayetano’s right was not violated because he was stopped as a result of a checkpoint, which the Republic argues does not violate

¹ This Order has been reformatted for publication.

such rights. For the reasons that follow, Cayetano’s motion to suppress is **GRANTED**.

BACKGROUND

[¶ 2] On December 24, 2019, the police were conducting a sobriety checkpoint at the PCC parking lot. Cayetano was asked to pull over. When Officer Amalei asked Cayetano for his license and registration, Officer Amalei could smell a strong odor of alcohol coming from his breath. Cayetano admitted to consuming more than four beers and was asked to perform a Field Sobriety Test. Cayetano failed the test. Cayetano was booked and held until the following afternoon.

[¶ 3] On February 27, 2020, Cayetano was charged with one count of Driving Under the Influence of Intoxicating Liquor for the incident on December 24, 2019.

DISCUSSION

[¶ 4] Pursuant to Article IV, Section 4 of Palau’s Constitution, “[e]very person has the right to be secure in his person, house, papers and effects against entry, search and seizure.” The right to be secure against unreasonable search and seizure, using language almost identical to that of the United States Constitution’s Fourth Amendment, is also stated at 1 PNC § 403. The Appellate Division has held that Palau’s Constitution does not establish absolute protection from *all* search and seizure, and because 1 PNC § 403 (stating the right to security from unreasonable search and seizure) does not conflict with the Constitution, the protection extends only to unreasonable search and seizure. *ROP v. Gibbons*, 1 ROP Intrm. 547A (1988).

[¶ 5] There is no question that the stop of Cayetano at the checkpoint at the PCC parking lot constitutes a seizure under Article IV of the Palau Constitution. Furthermore, that in general officers must have probable cause to justify a traffic stop. *ROP v. Imeong*, 7 ROP Intrm. 257, 259 (Tr. Div. 1998). However, Courts have noted that “the circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving patrol stop”. *US v. Ortiz*, 422 U.S. 891, 895 (1975). The question then in this case is whether a stop pursuant to a suspicion-less checkpoint rather than a traffic stop

requiring probable cause is considered an unreasonable seizure which is prohibited.

[¶ 6] Palau’s search and seizure protections are similar to those established by the United States Constitution, and as such, the court may look to discussions about this issue in United States law as persuasive authority, as there are no Appellate Division case law on point. *See Uchau v. Napoleon*, 19 ROP 1, 4 (2011) (“Palau courts may look to U.S. case law for guidance, especially those cases interpreting identical or similar constitutional provisions.”); *see also, e.g., King v. Repub. of Palau*, 6 ROP Intrm. at 138 (citing to U.S. case law regarding the U.S. Constitution’s Fourth Amendment in analyzing Article IV of the Palau Constitution).

[¶ 7] In fact, this court did exactly that in *ROP v. Nakamura*, Crim. Case No. 18-077, slip op, (C. C. P. Aug. 17, 2018), and considered and adopted the United States Supreme Court case, *Michigan Dept. of State Police v. Sitz*, 496 U. S. 444 (1990). There the U. S. Supreme Court, in applying a balancing test, held that sobriety checkpoints did not violate the search and seizure provisions of the Constitution. Specifically, that “the State’s interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program.” *Id.* at 455.

[¶ 8] This court agreed, similar in *Sitz*, that the Republic also has an interest in preventing drunk driving. The Olbiil era Kelulau has already determined that “driving while under the influence of alcohol or drugs is a serious problem in the Republic.” RPPL No. 7-48. It affects lives and causes significant amounts of property damage. In addition, the court need only look at its criminal docket to see the magnitude of the problem as reflected in the number of DUI cases regularly filed. However, the court still believes, in order to weigh in favor of the check points, the court needs to determine, as done in *Sitz*, whether the system in place does reasonably advance the Republic’s interest, and that the degree of intrusion upon motorists is indeed minimal.

[¶ 9] As noted in *Nakamura*, the court still needs to know what sort of system is place. Whether there is a formal protocol in place? If so, whether all relevant officers are trained on the protocol? The court also needs to know how effective the system is in advancing the Republic’s interest. In other words,

how many motorists are usually stopped and how many are arrested for DUI? Finally, the court needs to know the degree of intrusion on the motorists – what is the duration of the check points? What is the average delay for each motorist?

[¶ 10] Since the *Nakamura* decision, the Republic has promulgated Bureau of Public Safety Palau Policy for Checkpoints and Information Seeking Stops. The policy provides guidelines and procedures for the law enforcement to comply with during checkpoints. According to the testimony of the officers, they were not given separate training on the protocols because the protocols were based on procedures they were already practicing. In any case, prior to the checkpoints, all the participating officers will have a briefing and an Officer in Charge will be assigned to oversee the checkpoint. After completion of the checkpoints, forms detailing the stops are to be prepared and submitted, and the Chief of Patrol reviews the forms for accuracy and completeness.

[¶ 11] As to the effective of the checkpoints and degree of intrusion, pursuant to the testimony of the officers and the checkpoint forms, motorists may be stopped one at a time, every other motorist, every third motorist, every fifth motorist, or as done in this case, three cars at a time. The average number of vehicles actually stopped and the duration of the checkpoint is not clear but in this particular case, there were 45 cars stopped and the duration of the checkpoint was from 2355 hours to 0130 hours, a span of about 1.5 hours. According to the officers, the stops generally takes about 2-4 minutes. If further investigation is necessary, such as a field sobriety test, then it may take up to 15 minutes. Furthermore, based on Chief of Patrol's testimony, it is his observation that the checkpoints done during the holidays have resulted in a 75% reduction of DUI cases.

[¶ 12] On the surface, the checkpoint procedures as instituted by the Bureau of Public Safety appear to reasonably advance the Republic's interest and are minimally intrusive. However, as revealed during the hearing, the procedures have yet to be implemented consistently throughout the Bureau to assure the court that it is indeed reasonably advancing the Republic's interest. First, the court notes, one of the officers who was manning the checkpoint on the evening Cayetano was arrested, didn't seem to fully understand the differences in the stop schedules. Specifically, when asked about what stop schedule they were

performing on the night of the incident, he stated every third car but when asked to explain what that meant, he was describing three cars at a time. More concerning is the fact that this officer did not appear to know that as part of his duties during the checkpoint, he was supposed to collect and keep track of all the vehicles that he was assigned for purposes of preparing a detailed report regarding the checkpoint stops. As a result, 11 vehicles that were supposedly stopped were not tracked and it is not clear what was the disposition. Cayetano is among the 11 but is only known as he happened to be the one person that was arrested that evening. Finally, despite the clear missing information, it is also not clear whether the Chief of Patrol reviewed the reports for completeness and accuracy or even took measures to correct the clear lack of understanding by all the officers conducting the checkpoints of what they each needed to do during the checkpoints.

[¶ 13] Because not all officers conducting the checkpoints appear to have a full understanding of the types of stop schedules and what they need to do regarding tracking the stops, and the failure of the Chief of Patrol to assure the reports are indeed accurate and complete, it is still difficult for the court to determine the effectiveness of this checkpoint policy in advancing the Republic's interest. Furthermore, although Chief Ngiramengior testified that he could see a 75% reduction of DUI cases because of the checkpoints, with the inconsistent tracking and filling out of relevant forms and no evidence such as the number of DUI cases that occurred during any previous holidays when there were no checkpoints and the years the checkpoints were done, there is no way to assess the credibility of this number.

[¶ 14] Based on the above, the court is still unable find the checkpoint as performed in this case was a reasonable seizure. Again, we are dealing with the Constitutional right of individuals to be free from unreasonable search and seizures, and as valid and important as the Republic's interest in preventing driving under the influence is, without duly trained officers, better record collection practices, and consistent application of the checkpoint protocols, to assure the system does advance the Republic's interest, the court cannot find in favor of the checkpoint. Accordingly, the sobriety checkpoint, as executed on December 24, 2019, violated Cayetano's right under the search and seizure provision of the Constitution.

CONCLUSION

[¶ 15] For the foregoing reasons, Cayetano's motion seeking suppression of all evidence against him as a result of the stop is **GRANTED**.