

FILED

25 APR 1990 1555

Clerk

Superior Court

Northern Mariana Islands

By: *[Signature]*

Deputy Clerk of Court

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
vs.)
)
RAMON AGUON, et. al.,)
)
Defendants.)
_____)

CRIMINAL ACTION NO. 90-08

SUPPLEMENT TO DECISION OF
MARCH 9, 1990

This matter is before the Court on the Attorney General's Motion for Clarification and Reconsideration of the Court's Decision rendered on March 9, 1990, concerning various disputed criminal procedure issues relevant to this matter. In its motion, the Government specifically seeks clarification and reconsideration of the procedures and requirements surrounding the initial determination of probable cause for warrantless arrests.

Before proceeding to address the Government's concerns, the Court finds it necessary to point out several misconceptions regarding portions of the Court's Decision present in the Government's motion.

First, the Government concludes from its reading of the Court's Decision that, "the Court has opted for the initial determination (of probable cause) to be made at the time bail is requested." To the contrary, the Court has made no such option. The Court has merely pin-pointed where, in the Government's current pre-trial practices, the initial probable cause determination for warrantless arrests takes place and concluded that the Government's current practice in this area is consistent with the United States Supreme Court's mandate in Gerrish v Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).

Second, the Government misinterprets the Court's Decision as stripping the Department of Public Safety of police discretion in the decision to release or detain warrantless arrestees. The Court's point in this area might be better understood if it set forth what its Decision did not do.

The Court's Decision did not affect an officer's authority to employ his discretion in releasing a suspect after a field arrest where circumstances dictate release. The Court's Decision did not affect police discretion to either book or release a suspect at the station. The Court's Decision does not apply to cases where a person is arrested and booked but after police consultation with a prosecutor, is released shortly after arrest. Although not raised in the Government's motion, the Court's Decision is inapplicable to cases involving a simple misdemeanor traffic violation. These arrests are governed by the procedures set out in 9 CMC §§1301-1312.

None of the above cited arrest situations requires a Gerstein probable cause determination because the individual is no longer in police custody at the critical point in time where such a determination becomes mandatory. The only time a Superior Court judge must be contacted for a Gerstein probable cause determination is when, after all the administrative steps incident to arrest are completed, the Government has decided to further detain the arrested person.

Having rectified these misconceptions, the Court now addresses the Government's concerns.

The Government's overriding concern with the Court's Decision is that the probable cause requirements for warrantless arrests as mandated by Gerstein, are "unduly burdensome in numerous cases that are handled on a daily basis." Clearly, the Government was referring to page 12 of the Decision requiring the police to contact a prosecutor who in turn must contact a Superior Court judge for a probable cause determination as one of the administrative steps incident to arrest. By this language, the Court means that if the Government has decided to detain an arrested person beyond the time necessary to complete the administrative steps incident to arrest, a Superior Court judge must be immediately contacted for a probable cause determination. Since this jurisdiction has neither the resources nor the caseload to justify employing an overnight magistrate to make probable cause determinations outside of regular court hours, the Government shall be required to contact a Superior Court judge

for warrantless arrest probable cause determinations only between the hours of 6:00 a.m. and 10:00 p.m. seven days a week.

The Government cites the case of a person arrested for a violation of 9 CMC §7105 (Driving while Under the Influence of Alcohol or Drugs) as an example of one type of case frequently handled by the Department of Public Safety. Estimating that there are "some 10-20 DUI arrests weekly" the Government argues that the Court's prompt probable cause determination requirements would place an "onerous burden" on the system.

The prompt probable cause determination requirement in DUI cases must be considered with an eye to the requirements of 6 CMC §6401(a). On the one hand, this section prohibits the release of any person on bail who "is so under the influence of liquor or drugs that there is a reasonable ground to believe the person will be offensive to the general public". On the other hand, police efforts in conducting the administrative steps incident to arrest may be frustrated. Nevertheless, basic ground-rules must be set so that the legislative mandate of 6 CMC §6401(a) will be given effect and the administrative steps incident to arrest are conducted expeditiously and effectively.

When an arrested person is so under the influence of intoxicating liquor (and a breathalyzer test has not been administered) or drugs so as to frustrate police efforts in conducting the administrative steps incident to arrest, he may be detained for up to eight hours after arrest without a probable cause determination provided this time is not used by police to

build a case against the arrested person. See Kenekoa v City & County of Honolulu, 879 F.2d 607, 611 (9th Cir. 1989).

However, where a breathalyzer test has been administered and the arrested person's BAC^{1/} reaches or exceeds the legal limit of .10 as prescribed by 9 CMC §7105(a)(1) so as to frustrate police efforts in conducting the administrative steps incident to arrest, the probable cause determination may be delayed in accordance with the following table:^{2/}

<u>BAC</u>	<u>DELAY TIME (HOURS)</u>
.10 - .19	5
.20 - .29	12
.30 - .39	18
.40 - .???	24

At the expiration of the above prescribed time limits for the delay of a probable cause determination; the police shall immediately conduct the administrative steps incident to arrest. If, after completion of the administrative steps incident to arrest, the Government decides to further detain the arrested person, a Superior Court judge must be contacted for a probable

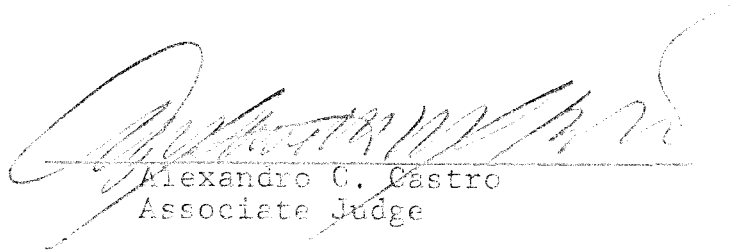
1/ Blood Alcohol Concentration

2/ The table's delay time limits are based on the approximate amount of time required for an average person's body to metabolize alcohol. The table's approximations are based on the general rule that it will take as many hours as the number of drinks consumed to sober up completely. Presentation of Bryan R. Ellis, M.A., C.S.W. at the National Judicial Conference, "Drinking Driver in High Volume Courts", Rollins College, Orlando, Florida (March 25-30, 1990).

cause determination.

This Supplement shall be filed and published as a part of the Court's Decision entered on March 9, 1990.

SO ORDERED this 25 day of April, 1990.



Alexandro C. Castro
Associate Judge