

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR PUBLICATION

CLERK OF COURT
SUPERIOR COURT

2013 SEP 13 AM 10: 56

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

BY *[Signature]*
DEPUTY CLERK OF COURT

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

vs.

**RAMON S. KAIPAT,
D.O.B. 05/24/1978**

Defendant.

CRIMINAL CASE NO. 13-0140

**ORDER GRANTING MOTION TO
DISMISS BY DEFENDANT RAMON
KAIPAT**

I. INTRODUCTION

THIS MATTER came before the Court for hearing on August 21, 2013, at 1:30 p.m. in Courtroom 223A. Ramon Kaipat (“Defendant”) moves to dismiss the charge of riot against him on the grounds that the statute under which he is charged, Public Law 3-71, codified at 6 CMC § 3102 (“section 3102”), is unconstitutionally overbroad and vague, both on its face and as applied to his alleged conduct. The Government opposes the motion. The Commonwealth was represented by Margo Brown, Assistant Attorney General. Defendant was represented by Jennifer Dockter, Esq.

II. FACTS

Section 3102 prohibits rioting, defining it as: “assembl[ing] with two or more other persons and together with the latter, by force, violence, loud noise, shouting or threats, plac[ing] others in fear or danger.”

On June 13, 2013, the Government filed an Amended Information charging Defendant with one count of violation of section 3102, alleging that on June 1, 2013, Defendant, assembled with seven

1 others, by force, violence, loud noise, shouting or threats, placed others in fear or danger.

2 **III. DISCUSSION**

3 The issues presented by Defendant’s motion are therefore as follows:

4 (1) Is section 3102 overbroad on its face and as applied to Defendant, violating the First
5 Amendment of the U.S. Constitution and Article I, section 2 of the Commonwealth Constitution?

6 (2) Is section 3102 vague on its face and as applied to Defendant, violating Defendant’s right
7 to due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article
8 I, Section 5 of the Commonwealth Constitution?

9 The Court examines these issues in turn.

10 Statutes are presumed to be valid. *See In re Seman*, 3 NMI 57 (1992). Generally courts must
11 abstain from addressing a constitutional issue when the circumstances allow for alternative paths of
12 analysis. *See Commonwealth v. Islam*, Crim No. 07-0088 (NMI Super. Ct. Mar. 26, 2008) (Ruling and
13 Order: Denying D.’s Mot. to Dismiss, Granting D.’s Mot. for Jury Trial at 3). The circumstances here,
14 however, present an “an unavoidable constitutional question.” *Id.* Section 501(a) of the
15 Commonwealth Covenant establishes that the First, Fifth, and Fourteenth Amendments to the U.S.
16 Constitution are fully applicable within the Commonwealth. Therefore, the decisions of the U.S.
17 Supreme Court regarding freedom of speech and due process of law are binding precedents upon this
18 Court.

19 In analyzing whether a criminal statute is unconstitutionally overbroad or vague on its face, a
20 court must first determine “whether the enactment reaches a substantial amount of constitutional
21 conduct.” *Village of Hoffman Estate v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982). If
22 a statute prohibits a substantial range of conduct protected by the First Amendment, that statute can be
23 challenged as overbroad. *See Kolender v. Lawson*, 461 U.S. 352, 358 n. 8 (1980); *Doran v. Salem Inn,*
24 *Inc.*, 422 U.S. 922, 933 (1975); *see City of Chi v. Morales*, 527 U.S. 41, 52 (1999) (“[T]he overbreadth
25 doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if
26 the impermissible applications of the law are substantial when ‘judged in relation to the statute’s plainly
27 legitimate sweep.’” (internal citation omitted)).

28 Here, Defendant claims section 3102 broadly prohibits conduct including the constitutionally

1 protected rights of free speech and assembly guaranteed by the First Amendment. Section 3102
2 includes shouting and threats as part of the conduct it prohibits, thereby prohibiting speech. It also
3 prohibits assembling with others when by force, violence, loud noise, shouting, or threats, such conduct
4 causes fear or endangers others.

5 The Court does not find it necessary to decide this matter on the issue of overbreadth, however,
6 because it is clear here that the vagueness of section 3102 makes a facial challenge more appropriate,
7 as it is a criminal law that does not contain a *mens rea* requirement and it infringes on constitutionally
8 protected rights. *See Morales*, 527 U.S. at 55; *Coulatti v. Franklin*, 439 U.S. 379, 391-95 (1979) (“This
9 Court has long recognized that the constitutionality of a vague statutory standard is closely related to
10 whether that standard incorporates a requirement of *mens rea*.”) (noting it is well settled that a statute
11 is void for vagueness, especially “where the uncertainty induced by the statute threatens to inhibit the
12 exercise of constitutionally protected rights.”).

13 “When vagueness permeates the text of such a law [that infringes on constitutionally protected
14 rights], it is subject to facial attack.” *Morales*, 527 U.S. at 55. A criminal law may be invalidated for
15 vagueness when either (1) it fails to provide “the kind of notice that will enable ordinary people to
16 understand what conduct it prohibits;” and (2) “it may authorize and even encourage arbitrary and
17 discriminatory enforcement.” *Id.*

18 The Court finds section 3102 is so vague and standardless that it leaves the public uncertain as
19 to the conduct it prohibits, thereby violating the Due Process clause. *See id.* First, it is difficult to
20 imagine how any Commonwealth citizen who happened to be assembled in the same place with other
21 persons would know how much noise constituted “loud.” Loud noise could be anything from speaking
22 in a loud tone, to singing out loud, slamming one’s door, to having a loud cell phone ring tone. Further,
23 it is difficult to imagine how a citizen could know how loud a noise could be before it caused fear or
24 endangered others. A citizen loudly talking on a cell phone at a barbecue while with a group of friends
25 might awaken a baby sleeping nearby in a stroller and frighten it. A deejay at a house party might play
26 music so loudly that it effectively silences the sound of the home’s smoke detector, thereby endangering
27 others. Section 3102 also prohibits shouting when assembled with others when it causes fear or
28 endangers others. It is difficult to imagine how a citizen would know whether he or she could shout in

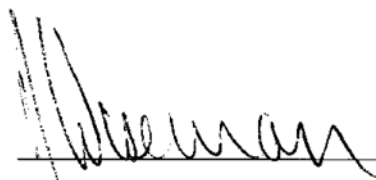
1 certain situations, for fear it might cause fear in others or endanger them. A shout made in the middle
2 of a church mass might cause fear in those around them, while a shout made at a baseball game would
3 cause no fear at all. A shout made from a pedestrian to his group assembled across the street might
4 distract a nearby driver, causing him to fail to see the stopped car in front of him, thereby endangering
5 both drivers. Section 3102 thus fails to provide the kind of notice that would enable an ordinary person
6 to understand what conduct is prohibited. Further, such a law might authorize and even encourage
7 arbitrary and discriminatory enforcement. One might be guilty of violating section 3102 by playing loud
8 music at 3:00 a.m. where one playing loud music at 3:00 p.m. would not face the same enforcement.

9 Defendant points to a near complete survey of riot statutes in other American jurisdictions to
10 illustrate how different and inadequate section 3102 is in comparison. The Court finds a review of the
11 survey makes it apparent that section 3102 is completely dissimilar to the crime of riot in a vast majority
12 of American jurisdictions and as a result falls short of passing constitutional muster. The Court
13 therefore finds 6 CMC § 3102 is unconstitutional because it is vague on its face.

14 **IV. CONCLUSION**

15 For the reasons set forth above, the Court therefore **GRANTS** Defendant's motion to dismiss
16 because the violation of the statute which he is charged with is void for facial vagueness, and is therefore
17 unconstitutional as it violates Defendant's right to due process of law under the Fifth and Fourteenth
18 Amendments to the U.S. Constitution and Article I, Section 5 of the Commonwealth Constitution.

19
20
21 **SO ORDERED** this 13th day of September, 2013.

22
23
24
25 
26 _____
27 DAVID A. WISEMAN, Associate Judge
28