

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	Traffic Case No. 98-6353
	)	
Plaintiff,	)	<b>ORDER DENYING DEFENDANT'S</b>
	)	<b>MOTIONS TO DISMISS AND TO</b>
v.	)	<b>SUPPRESS</b>
	)	
AN HUTIAN,	)	
	)	
Defendant.	)	
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**I. PROCEDURAL BACKGROUND**

This matter came before the Court on March 17, 1999, in Courtroom D on Defendant's motions to dismiss and to suppress. Barry A. Hirshbein, Esq., appeared on behalf of the Commonwealth. Robert T. Torres, Esq., appeared on behalf of the Defendant, An Hutian. The Court, having heard the arguments of counsel and being fully informed of the premises, now renders its decision.

**II. FACTS**

On August 18, 1998, Defendant was allegedly observed driving at a high rate of speed on Beach Road in San Jose, Saipan. Department of Public Safety (DPS) Officer Joey Cruz testified that he stopped Defendant and inquired as to why he was traveling so fast. Defendant stated that [p. 2] he was returning home. Officer Cruz noted that Defendant had bloodshot eyes, a flushed face, slurred speech, a strong odor of alcohol on his breath, and that he was swaying back and forth while standing. Officer Cruz then requested that Defendant perform a field sobriety test but Defendant refused. Defendant was then arrested for alleged: (1) reckless driving, in

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violation of 9 CMC §7104; (2) driving under the influence, in violation of 9 CMC §7105; and (3) refusal to submit to an alcohol breath test, in violation of 9 CMC §7106.

Subsequent to the arrest, Officer Cruz brought Defendant to DPS headquarters where Defendant was again asked to submit to an alcohol breath test. Defendant again refused. Officer Cruz then showed Defendant the standard DPS form for informing persons of the Commonwealth's implied consent law, found at 9 CMC §7106. Officer Cruz testified that he read the implied consent form to Defendant in English. Officer Cruz also testified that he explained the form's meaning to Defendant in simple English. Defendant signed the form and put a "check" mark on the portion of the form indicating his refusal to submit to an alcohol breath test and his knowledge of the consequences of such refusal.

Defendant is a citizen of the Republic of China currently living on Saipan. He has limited English speaking ability and comprehends only basic English speech. Defendant neither reads nor writes in the English language.

### **III. ISSUE**

1. Whether the implied consent provisions of 9 CMC §7106 require that a person "understand" the consequences of refusing to submit to an alcohol breath test before the Court may impose those consequences where the implied consent form used by the Department of Public Safety is in English and where Defendant is from the Republic of China and comprehends only basic English speech?

### **IV. ANALYSIS**

Defendant argues that the implied consent provisions of 9 CMC §7106 require that a person "understand" the consequences of refusing to submit to an alcohol breath test before the Court may impose those consequences. 9 CMC §7106(a) states that "[a]ny person who operates a [p. 3] motor vehicle upon the highways within the Commonwealth shall be deemed to have given his or her consent . . . to a test of his or her breath . . ." 9 CMC §7106(a). 9 CMC §7106(b) states that "[a] person requested to submit to a test . . . shall be warned by the police officer requesting the test that a refusal to submit to the test will result in revocation of his or her license to operate a motor vehicle for six months." 9 CMC §7106(b).

Defendant argues that case law regarding implied consent is scant and therefore urges the Court to consider the procedural safeguards set forth in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966). Miranda holds that a defendant must voluntarily, knowingly, and intelligently waive his right to counsel and right to remain silent before a statement taken from a custodial interrogation can be used against him. Id. Defendant argues that the procedural safeguards of Miranda are applicable to the present fact situation by analogy because a defendant arrested and in custody for reckless driving and driving under the influence must voluntarily, knowingly, and intelligently waive his right to counsel and right to remain silent before a statement taken from an interrogation can be used against him. Therefore, Defendant claims that the present action should be dismissed, or alternatively, that the evidence be suppressed on the grounds that Defendant did not “knowingly” or “intelligently” refuse the alcohol breath test because he did not understand that his refusal to submit to an alcohol breath test could result in a six-month revocation of his licence to operate a motor vehicle.

The procedural safeguards of Miranda are designed to ensure that an individual’s Fifth Amendment privilege against self-incrimination is protected. Miranda holds that “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” Id., 86 S. Ct. at 1612. However, the Fifth Amendment privilege against self-incrimination only protects the accused from being compelled to “provide the State with evidence of a testimonial or communicative nature.” Schmerber v. California, 384 U.S. 757, 761, 86 S. Ct. 1826, 1830, 16 L. Ed. 2d 908 (1966). Requiring a person to submit to a blood-alcohol test does not deprive that person of their Fifth Amendment [p. 4] privilege against self-incrimination because “taking a driver’s blood for alcohol analysis does not call for testimonial compulsion prohibited by the Fifth Amendment.” New York State v. Kates, 428 N.E.2d 852, 854 (N.Y. 1981), citing Schmerber. Also, requiring an arrestee to submit to a urine test does not deprive that person of their Fifth Amendment privilege against self-incrimination. United States v. Edmo, 140 F.3d 1289, 1291 (9<sup>th</sup> Cir. 1998). As such, the Court finds that a person’s refusal to submit to an alcohol breath test does not

implicate the Fifth Amendment privilege against self-incrimination because it does not call for evidence of a testimonial or communicative nature. Therefore, the procedural safeguards set forth in Miranda do not apply to the present situation and the Commonwealth need not show that Defendant made a “knowing” and “intelligent” decision to sign the implied consent form.

Having established that the procedural safeguards of Miranda are not applicable, the Court turns to the plain language of 9 CMC §7106. 9 CMC §7106 states, in pertinent part:

**(a) Any person who operates a motor vehicle upon the highways within the Commonwealth shall be deemed to have given his or her consent . . . to a test of his or her breath . . .** The test shall be administered at the request of a police officer having reasonable grounds to believe the person operating or in actual physical control of a motor vehicle upon the highways is under the influence of alcohol or drugs only after

- (1) A lawful arrest and
- (2) The police officer has informed the person of the sanctions provided in this section.

**(c) A person requested to submit to a test . . . shall be warned by the police officer requesting the test that a refusal to submit to the test will result in revocation of his or her license to operate a motor vehicle for six months.**

Following this warning, if a person under arrest refuses upon the request of a police officer to submit to the test, none shall be given, but the court upon receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the highways of the Commonwealth while under the influence of alcohol . . . and that the person had refused to submit to the test upon the request of the police officer, shall revoke that person’s license . . . as provided for in 9 CMC §7108.

9 CMC §7106 (emphasis added). If the meaning of a statute is clear, the Court will not construe it contrary to its plain meaning. Office of the Attorney General v. Deal, 3 N.M.I. 110, 117 (1992). Pursuant to [p. 5] 9 CMC §7106, the Commonwealth must show: (1) that Defendant operated a motor vehicle upon the highways within the Commonwealth; (2) that the arresting officer had reasonable grounds to believe Defendant was under the influence of alcohol or drugs; (3) that there was a lawful arrest; and (4) that the police officer warned Defendant that a refusal to submit to the test would result in the revocation of his licence to operate a motor vehicle for six months. There is no requirement that Defendant “understand” the consequences of refusing to submit to an alcohol breath test before the Court may impose those consequences.

Officer Cruz testified that Defendant was operating a motor vehicle on August 18, 1998, at Beach Road, San Jose and therefore Defendant was operating a motor vehicle upon the

highways within the Commonwealth. Officer Cruz testified that Defendant had bloodshot eyes, a flushed face, slurred speech, a strong odor of alcohol on his breath, and that he was swaying back and forth while standing, therefore, Officer Cruz had reasonable grounds to believe that Defendant was under the influence of alcohol while operating a motor vehicle upon the highways within the Commonwealth. Officer Cruz also had probable cause to believe that Defendant was driving under the influence of alcohol and therefore the subsequent arrest of Defendant was lawful. Finally, Officer Cruz read the implied consent form to Defendant verbatim and explained its meaning to Defendant in simple English.

Defendant argues that Officer Cruz paraphrased or explained the implied consent in a manner that misstates the implied consent law. Defendant understood Officer Cruz to say that the six-month time period referred to a term of incarceration for driving under the influence, not to the time for which Defendant's driver's licence would be revoked should he refuse to submit to the alcohol breath test. Courts interpreting implied consent laws and the requirement that police officers inform persons of the consequences of refusing to submit to an alcohol breath test have held that "substantial compliance" is sufficient to support a Court's revocation of a driver's licence under the law. See, State v. Sutton, 503, N.W.2d, 326, (Wis. Ct. App. 1993). See also, Asbridge v. North Dakota State Highway Comm'r, 291 N.W.2d, 739 (N.D. 1980). Officer Cruz [p. 6] substantially complied with the law because he read the DPS implied consent form to Defendant verbatim.

The Court notes that although providing foreign language versions of the implied consent form may seem just and fair, such action is within the purview of the Legislature and not the Court. See, Commonwealth v. Island Amusement Corp., No. 97-024 (N.M.I. Nov. 16, 1998) (slip op. at 3).

## V. CONCLUSION

The procedural safeguards of Miranda are designed to ensure that an individual's Fifth Amendment privilege against self-incrimination is protected. Defendant's refusal to submit to an alcohol breath test does not implicate the Fifth Amendment because it does not call for

evidence of a testimonial or communicative nature. Therefore, the procedural safeguards set forth in Miranda do not apply to Defendant's refusal to submit to the alcohol breath test.

The Court will not construe a statute against its plain meaning. Pursuant to 9 CMC §7106, the Commonwealth must show: (1) that Defendant operated a motor vehicle upon the highways within the Commonwealth; (2) that the arresting officer had reasonable grounds to believe Defendant was under the influence of alcohol or drugs; (3) that there was a lawful arrest; and (4) that the police officer warned Defendant that a refusal to submit to the test would result in the revocation of his licence to operate a motor vehicle for six months. In sum, there is no requirement that Defendant "understand" the consequences of refusing to submit to an alcohol breath test before the Court may impose those consequences.

For the foregoing reasons, Defendant's motions to dismiss and to suppress are **DENIED**.

So ORDERED this 5 day of April, 1999.

/s/ Juan T. Lizama  
JUAN T. LIZAMA, Associate Judge