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FSM SUPREME COURT APPELLATE DIVISION

STEVEN J. SIGRAH,	)	APPEAL CASE NO. K2-2002
	)	Traffic Case No. 212-01
Appellant,	)	
	)	
vs.	)	
	)	
STATE OF KOSRAE,	)	
	)	
Appellee.	)	
_____	)	

OPINION

Argued: July 9, 2003
Decided: January 30, 2004

BEFORE:

Hon. Andon L. Amaraich, Chief Justice, FSM Supreme Court
Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court

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HEADNOTES

Appellate Review – Standard of Review

When the facts are not in dispute and questions of law alone are present, the appellate court reviews these questions de novo. Sigrah v. Kosrae, 12 FSM Intrm. 320, 324 (App. 2004).

Constitutional Law – Judicial Guidance Clause

The FSM Supreme Court is ever mindful of the constitutional admonition that court decisions shall be consistent with the FSM Constitution, Micronesian custom and traditions, and Micronesia's social and geographical configuration and that in rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia, and that the Kosrae Constitution also provides that court decisions shall be consistent with that constitution, state traditions and customs, and the state's social and geographical configuration. Sigrah v. Kosrae, 12 FSM Intrm. 320, 325 (App. 2004).

Constitutional Law – Interpretation

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. When the FSM Constitution's language has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. But in evaluating the reasoning of other courts, the court emphasizes that it must always independently consider the suitability of that reasoning for the FSM. Sigrah v. Kosrae, 12 FSM Intrm. 320, 325 (App. 2004).

Constitutional Law – Kosrae – Legislative Privilege

Historically the legislative privilege from arrest has not applied in criminal cases. Sigrah v. Kosrae, 12 FSM Intrm. 320, 326 (App. 2004).

Constitutional Law – Kosrae – Legislative Privilege

The Kosrae Constitution's drafters by no means intended the legislative privilege from arrest to be absolute. In addition to the stated exception for felony and breach of the peace that was incorporated into the privilege as adopted, the drafters felt that charges may still be filed against members at a time different from when a legislator is going to or coming from a legislative session. Sigrah v. Kosrae, 12 FSM Intrm. 320, 326 (App. 2004).

Constitutional Law – Kosrae – Legislative Privilege

The court declines to adopt a general rule that any Kosrae police officer who stops a motorist has a specific duty to inquire of the motorist whether he is a Kosrae legislator going to or returning from conducting official business. Sigrah v. Kosrae, 12 FSM Intrm. 320, 326 (App. 2004).

Constitutional Law – Kosrae – Legislative Privilege

The scope the Kosrae Constitution's legislative privilege is coterminous with the historical understanding of the phrase, "treason, felony, and breach of the peace," and that the privilege conferred by the Kosrae Constitution does not apply to criminal cases. Since the Kosrae Constitution's privilege of freedom from arrest does not apply to criminal cases, it is thus inapplicable to a category 4 misdemeanor, which is a criminal offense. Sigrah v. Kosrae, 12 FSM Intrm. 320, 327 (App. 2004).

Constitutional Law – Kosrae – Interpretation

Since article II, section 1(d) of the Kosrae Constitution is similar to article IV, section 5 of the FSM Constitution Declaration of Rights and the fourth amendment to the U.S. Constitution, interpretations of these two provisions may be useful for interpreting the Kosrae Constitution provision, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. Sigrah v. Kosrae, 12 FSM Intrm. 320, 327 (App. 2004).

Constitutional Law – Interpretation

In construing a provision of the Declaration of Rights, our courts should carefully evaluate the way that the United States Supreme Court has interpreted the United States Constitution because a phrase appearing in our Constitution that was borrowed from the United States Constitution may be presumed to have a similar interpretive meaning. Sigrah v. Kosrae, 12 FSM Intrm. 320, 327-28 (App. 2004).

Criminal Law and Procedure – Arrest and Custody; Search and Seizure

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. Sigrah v. Kosrae, 12 FSM Intrm. 320, 328 (App. 2004).

Search and Seizure

The standard by which the actions of law enforcement personnel is to be measured in conducting a traffic stop is one of reasonableness. To ensure against the arbitrary invasion of an individual motorist's security and privacy interests, the stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate, rational program intended to make the state's roads safer, and not as a means of circumventing either the probable cause or reasonable, articulable suspicion, standards that would otherwise apply to the stop of an individual motorist. The manner of stopping must be in a rational, predetermined way. Either all motorists must be stopped, or the stops must occur in a specified incremental manner, such as every second, every fifth, etc., motorist. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. With these safeguards in place, the state's interest in promoting roadway safety more than outweighs the intrusion upon the privacy of and momentary inconvenience to the stopped motorists. Sigrah v. Kosrae, 12 FSM Intrm. 320, 329 (App. 2004).

Search and Seizure

A checkpoint stop constitutes a mechanism for enforcing applicable laws. The roadblock itself, together with its prior announcement, is a means of causing people to take action to comply with applicable laws. When the stop is conducted in such a way that the rights conferred upon citizens under both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution are afforded adequate protection, the roadblock stop is not an unreasonable seizure. Sigrah v. Kosrae, 12 FSM Intrm. 320, 330 (App. 2004).

Search and Seizure

It is sufficiently plain that automobiles by their intrinsic nature implicate safety concerns. Thus it does not take a statistical analysis to make the point that they are powerful mechanical devices that must be operated in a responsible manner, and that the operation of an automobile that is not roadworthy creates a hazard for other motorists and pedestrians, and a statistical analysis, however useful it might prove, is not a critical predicate to a finding that Kosrae's program of roadway safety roadblocks is constitutional. Sigrah v. Kosrae, 12 FSM Intrm. 320, 330 (App. 2004).

Criminal Law and Procedure – Right to Silence

The privilege against self-incrimination is designed to prevent the use of devices to subvert the will of an accused. This protection has its roots in the United States Constitution's fifth amendment.

Historically, the linchpin of this principle has been to prohibit the compelling of evidence of a testimonial or communicative nature. The protection does not extend to non-testimonial evidence such as fingerprints, handwriting exemplars, voice exemplars, or blood samples for purposes of determining a person's blood alcohol level, or the admission into evidence of a person's refusal to take a blood alcohol test. Sigrah v. Kosrae, 12 FSM Intrm. 320, 331 (App. 2004).

Criminal Law and Procedure – Right to Silence

The larger question is not whether a statute technically requires an act versus a statement, but whether the driver's failure to produce his license was compelled by the state in violation of the right against self-incrimination. Sigrah v. Kosrae, 12 FSM Intrm. 320, 332 (App. 2004).

Criminal Law and Procedure – Right to Silence

While a statute may be said to "compel" compliance with its requirement that a driver display his driver's license upon request by a police officer, it is manifestly the case that in such a sense every law specifying a positive duty and a penalty for failure to comply with that duty may be said to "compel" the required conduct. But this generalized characteristic of all effectively enforceable laws is a different question from whether the state coerced the driver's failure to display his license when the police officer requested him to do so. Sigrah v. Kosrae, 12 FSM Intrm. 320, 332 (App. 2004).

Criminal Law and Procedure – Right to Silence

A driver may not lay his own conduct in failing to have his license in his possession and failing to produce it upon an officer's request, at the statute's feet by claiming that it requires him to incriminate himself. The police officer who requested the driver to produce his license cannot be said to have prevented him from displaying his license, or to have engaged in any other type of coercive conduct. The short of it is that the state did not compel the driver's failure to produce his driver's license. Sigrah v. Kosrae, 12 FSM Intrm. 320, 332 (App. 2004).

Criminal Law and Procedure – Right to Silence

The constitutional privilege against self-incrimination is not meant to be a refuge for those who, by their own conduct and without any coercive action on the part of the state, fail to comply with the reasonable requirements of a valid statute. Sigrah v. Kosrae, 12 FSM Intrm. 320, 332-33 (App. 2004).

Criminal Law and Procedure – Right to Silence

Failure to produce a driver's license upon a police officer's request in contravention of a statute does not constitute compelled evidence within the meaning of either Article II, § 1(f) of the Kosrae Constitution, or Article IV, § 7 of the FSM Constitution, so as to render the statute unconstitutional under either of those constitutional provisions. Sigrah v. Kosrae, 12 FSM Intrm. 320, 333 (App. 2004).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Associate Justice:

On July 26, 2001, the appellant Steven J. Sigrah ("Sigrah") was stopped and cited by a Kosrae state police officer for unauthorized operation of a motor vehicle in violation of Kos. S.C. § 13.702. Sigrah's motion to suppress evidence obtained as a result of the stop was denied. After trial in Kosrae

State Court, a judgment of conviction was entered on November 26, 2002. Sigrah's sentence consisted of a warning against unauthorized operation of a motor vehicle, and a reminder that as a state senator, he was still required to obey Kosrae state laws. Thereafter, on December 2, 2002, Sigrah appealed his conviction to this court pursuant to Article VI, § 6 of the Kosrae Constitution.

For the following reasons, we affirm the trial court's decision.

A

The facts are not in dispute. On July 26, 2001, Sigrah, who is a Kosrae state senator, was on his way to a legislative committee meeting at the legislative chamber in Tofol, Kosrae. He, along with all other oncoming traffic, was stopped at a police checkpoint at Fwinpukal in Lelu, Kosrae, operated for the purpose of checking driver's license and vehicle registration. When asked to produce his driver's license, Sigrah did not do so, and testified at trial that he did not have it in his possession. Sigrah was cited for unauthorized operation of a motor vehicle, and continued on his way to the meeting, where he arrived late. All drivers who were similarly cited for failure to have a valid driver's license in their possession were permitted to drive on after being cited. The officer who stopped Sigrah, Tulensru Sigrah ("Tulensru"), is a relative of Sigrah, and knew that Sigrah was a state senator but did not know that he was on his way to a meeting at the legislative chamber. Sigrah did not inform Tulensru that he was traveling to the meeting until after Tulensru had issued the traffic citation. Tulensru testified that had he known that Sigrah was on his way to a legislative session, he would have waved Sigrah on and would not have stopped him. That the police were going to be conducting a traffic checkpoint stop for purposes of checking driver's license and registration had been announced in advance on the local radio station.

Because the facts are not in dispute, questions of law alone are present. We review these questions de novo. Nanpei v. Kihara, 7 FSM Intrm. 319, 323-24 (App. 1995). Sigrah frames the issues as follows:

> Issue 1: Whether the Trial Court erred when it failed to find that Senator Sigrah was arrested within the meaning of Kosrae Constitution Article IV, Section 8 (Legislative Privilege) when he was stopped on his way to a Legislative Committee Meeting by law enforcement officers conducting a roadblock.
>
> Issue 2: Whether the Trial Court erred when it failed to find that a suspicion-less roadblock stop of the driver of a motor vehicle for the sole purpose of gathering evidence of crimes is an unreasonable search and seizure under the Security and Warrant Clauses of Article II, Section 1(d) of the Kosrae Constitution and Article IV, Section 5 of the FSM Constitution.
>
> Issue 3: Whether the Trial Court erred when it failed to hold unconstitutional a law which authorizes the police to compel a person to give evidence that may be used against him in a criminal case in violation of Article II, Section 1(f) of the Kosrae Constitution, and Article IV, Section 7 of the FSM Constitution.

We consider each question in order.

B

Sigrah first assigns error to the trial court's finding that he was not "arrested" when he was stopped at the traffic checkpoint. He claims that this is significant in one particular respect. He asserts that as a result of this erroneous finding, the trial court did not recognize the privilege from arrest conferred upon Kosrae legislators under Article IV, § 8 of the Kosrae Constitution, which provides in pertinent part that "Senators are, in all cases except felony or breach of the peace, privileged from arrest during their attendance at sessions or committee meetings of the Legislature, and in going to and returning from the same." Sigrah claims that because he, as a state senator, was on his way to a meeting at the Kosrae Legislature, he was not subject to being stopped, cited for, and subsequently convicted of, unauthorized operation of a motor vehicle in violation of Kos. S.C. § 13.702 of the Kosrae State Code. Under the terms of that provision of the criminal code, unauthorized operation of a motor vehicle is a category 4 misdemeanor.

Although we agree at the outset with the trial court that Sigrah was not "arrested" when he was stopped at the roadblock, we find that as discussed in part D. ***infra***, Sigrah's stop constituted a "seizure" within the meaning of the search and seizure clauses of both Article II, § 1(d) of the Kosrae Constitution, and Article IV, § 5 of the FSM Constitution. Thus, we address the question whether the legislative privilege conferred by Article IV, § 8 of the Kosrae Constitution has any application.

In addressing this and the other issues raised in this case, we are ever mindful of the admonition of Article XI, § 11 of the FSM Constitution: "Court decisions shall be consistent with this Constitution, Micronesian custom and traditions, and the social and geographical configuration of Micronesia. In rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia." Similarly, Article VI, § 9 of the Kosrae Constitution provides that "[c]ourt decisions shall be consistent with this Constitution, State traditions and customs, and the social and geographical configuration of the State."

Although our trial division has considered the privilege conferred by the speech and debate clause of the Pohnpei Constitution, AHPW, Inc. v. FSM, 10 FSM Intrm. 420 (Pon. 2001), none of our courts have considered the related privilege of legislators to be free from arrest while traveling to or from a legislative session. Our national Constitution, as well as each of the four state constitutions, contains such a provision. FSM Const. art. IX, § 15; Kos. Const. art. IV, § 8; Pon. Const. art. VIII, § 7; Chk. Const. art. V, § 10; Yap Const. art. V, § 9.

In the absence of Micronesian precedent, this court can and should consider the reasoning from the courts of other common law jurisdictions. Rauzi v. FSM, 2 FSM Intrm. 8, 14-15 (Pon. 1985). When the language of the FSM Constitution has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Paul v. Celestine, 4 FSM Intrm. 205, 208 (App. 1990); ***see also*** Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003); M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 459-60, 463-64 (App. 1996); Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 45 (App. 1995); Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 371 (App. 1990); Tammow v. FSM, 2 FSM Intrm. 53, 56-57 (App. 1985) (when the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given to them by the U.S. Supreme Court); Jonas v. FSM, 1 FSM Intrm. 322, 327 n.1 (App. 1983); Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 69-70 (Kos. 1982). In evaluating the reasoning of other courts, we emphasize that we must always independently consider the suitability of that reasoning for the Federated States of Micronesia. Rauzi, 2 FSM Intrm. at 17.

Neither the Kosrae State Court nor this court has had previous occasion to consider the parameters of the legislative privilege conferred upon Kosrae legislators under the provision of Article IV, § 8 of the Kosrae Constitution. However, the pertinent language is similar to that of Article I, § 6 of the U.S. Constitution, which provides that United States senators and representatives "shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same." While the privilege as it appears in the United States Constitution incorporates the word "treason," which is absent from the Kosrae Constitution's formulation, that is accounted for by the national scope of the U.S. Constitution versus the state scope of the Kosrae Constitution. Like the United States Constitution, our own national Constitution incorporates the word "treason": "A member of Congress is privileged from arrest during his attendance at Congress and while going to and from sessions, except for treason, felony, or breach of the peace." FSM Const. art. IX, § 15.

In construing the reach of the privilege under the U.S. Constitution, the phrase, "treason, felony, and breach of the peace," has been determinative. The U. S. Supreme Court in Gravel v. United States, 408 U.S. 606, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972), held that the legislative privilege from arrest applies only in civil cases. "History reveals, and prior cases so hold, that this part of the Clause exempts Members from arrest in civil cases only. `When the Constitution was adopted, arrests in civil suits were still common in America. It is only to such arrests that the provision applies.'" Id. at 614, 92 S. Ct. at 2621, 33 L. Ed. 2d at 596 (citing Long v. Ansell, 293 U.S. 76, 83, 55 S. Ct. 21, 22, 79 L. Ed. 208, 210 (1934) (footnote in Ansell omitted)). The Gravel court also relied on Williamson v. United States, 207 U.S. 425, 28 S. Ct. 163, 52 L. Ed. 278 (1907), where, after an exhaustive examination of the historical antecedents of the phrase "treason, felony, and breach of the peace," 207 U.S. at 435-46, 28 S. Ct. at 166-70, 52 L. Ed. at 285-90, the court concluded that "`treason, felony, and breach of the peace,' as used in the constitutional provision relied upon excepts from the operation of the privilege all criminal offenses." Id. at 446, 28 S. Ct. at 170, 52 L. Ed. at 290. Thus, historically the legislative privilege from arrest has not applied in criminal cases.

With this background in mind, we consider the specific history of Article IV, § 8 of the Kosrae Constitution. The comments on the privilege in the Journal of the Kosrae Constitutional Convention of 1983 are in their entirety as follows. "The protection from arrest is to insure arrests could not prevent the Legislature or a legislature committee from having a quorum for the conduct of business. Charges may still be filed against members, and arrests can be made once the legislature session or committee concludes its business." SCREP No. 1-83-9, J. of Kos. Con. Con. 475. Sigrah testified at the suppression hearing that he did not know what a quorum was, but he also testified that no voting took place at the meeting that he attended. In any event, the comment from the standing committee report makes it plain that the drafters of the Kosrae Constitution by no means intended the legislative privilege from arrest to be absolute. In addition to the stated exception for felony and breach of the peace that was incorporated into the privilege as adopted, this is evidenced by the words, "[c]harges may still be filed against members," which we read to mean at a time different from when a legislator is going to or coming from a legislative session.

The foregoing comments from the privilege's formative history raise the specific concern that arresting a legislator on the way to a session could prevent a quorum for the transacting of legislative business. But even if Sigrah had immediately announced to the stopping officer that he was on his way to a meeting at the legislature, which he did not, the officer could still have asked him to display his license before permitting Sigrah to proceed on his way without placing a legislative quorum at any real hazard. Such a delay would in all likelihood be momentary. Further, requesting the display of the license but postponing the citation process until later would be consistent with the language of the

standing committee report providing for the later filing of criminal charges. As it was, Sigrah did not tell the stopping officer that he was on his way to a meeting at the legislature until after he had been cited. The stopping officer said that had he known this, he would have waved Sigrah on, and the credibility of this testimony stands unchallenged. On these facts, any tardiness in Sigrah's arrival at the legislature attributable to the traffic stop arose from Sigrah's own failure to make a claim of privilege when he was first stopped, and not from the stopping officer's failure to recognize the privilege. We decline to adopt a general rule that any Kosrae police officer who stops a motorist has a specific duty to inquire of the motorist whether he is a Kosrae legislator going to or returning from conducting official business.

Apart from these specific factual concerns, we address the implication of the second sentence from the standing committee report: "Charges may still be filed against members, and arrests can be made once the legislature session or committee concludes its business." We think it so highly improbable as to approach the fanciful that any sitting member of the Kosrae legislature would commit a violent crime resulting in an imminent threat to public safety while on his way to perform official legislative duties. We only posit such an unlikely hypothesis because the language of the foregoing sentence would seem to imply at least that even in such a case, the drafters of the Kosrae Constitution intended that a legislator could not be legally arrested until "the legislature session or committee concludes its business." Such a reading, however, does not comport with the express exceptions to the privilege – i.e., felony and breach of the peace – that are contained in Article IV, § 8 as adopted, and would lead to an unreasonable result, which we are disinclined to entertain. ***Cf.*** 2A C. DALLAS SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 45.12 (4th ed. 1973) ("It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result" (footnote omitted)). The better course is to hold that the intended scope of the legislative privilege provided for in Article IV, § 8 of the Kosrae Constitution is coterminous with the historical understanding of the phrase, "treason, felony, and breach of the peace," and that the privilege conferred by Article IV, § 8 of the Kosrae Constitution does not apply to criminal cases. Such a reading is consistent with the exception for felony and breach of the peace contained in the privilege itself, and also acknowledges that part of the Kosrae privilege's history expressly provides that "[c]harges may still be filed" against a state legislator regardless of whether the conduct supporting the charges occurred while the legislator was on the way to attend a legislative session.

In sum, Sigrah seeks to claim the privilege as a defense to the category 4 misdemeanor defined and proscribed by Kos. S.C. § 13.702. This is a criminal offense. In light of the foregoing, we hold that the privilege of freedom from arrest under Article IV, § 8 of the Kosrae Constitution, does not apply to criminal cases, and is thus inapplicable here. Accordingly, Sigrah's first assignment of error is without merit.

C

Sigrah's second contention is that a suspicionless stop – or a stop where law enforcement officials have no cause, probable or otherwise, to believe that a specific crime has occurred – of all oncoming vehicles for purposes of checking license and registration is per se a violation of the unreasonable search and seizure provisions of both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution. Both provide identically that "[t]he right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated." Sigrah contends that a precondition to any stop of an

automobile that passes muster under either of these constitutional provisions is the probable cause to believe that a crime has been committed. Courts of the FSM have not previously considered the constitutional implications of a suspicionless roadblock or checkpoint type stop. Where no FSM precedent exists, we may look to precedent from other jurisdictions. Rauzi, 2 FSM Intrm. at 14-15. Since article II, section 1(d) of the Kosrae Constitution is similar to article IV, section 5 of the FSM Constitution Declaration of Rights and the fourth amendment to the U.S. Constitution, interpretations of these provisions may be useful for interpreting the Kosrae Constitution provision, Kosrae v. Alanso, 3 FSM Intrm. 39, 42 (Kos. S. Ct. Tr. 1985), and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 412 n.2 (App. 2000); Weno v. Stinnett, 9 FSM Intrm. 200, 213 (App. 1999); FSM v. Inek, 10 FSM Intrm. 263, 265 (Chk. 2001); FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999); Afituk v. FSM, 2 FSM Intrm. 260, 263 (Truk 1986); In re Iriarte (I), 1 FSM Intrm. 239, 249 (Pon. 1983); Tosie v. Tosie, 1 FSM Intrm. 149, 154 (Kos. 1982). In construing a provision of the Declaration of Rights, our courts should carefully evaluate the way that the United States Supreme Court has interpreted the United States Constitution. FSM v. Tipen, 1 FSM Intrm. 79, 85 (Pon. 1982). A phrase appearing in our Constitution that was borrowed from the United States Constitution may be presumed to have a similar interpretive meaning. Jonas v. FSM, 1 FSM Intrm. 322, 327 n.1 (App. 1983).

We agree with the trial court that the roadblock stop here where all oncoming traffic was stopped is not an arrest. City of Overland Park v. Sandy, 587 P.2d 883, 887 (Kan. 1978) (holding that a routine license check at a roadblock-type stop "does not constitute an arrest in a legal sense where there is nothing arbitrary or harassing present"). Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. City of Indianapolis v. Edmond, 531 U.S. 32, 40, 121 S. Ct. 447, 453, 148 L. Ed. 2d 333, 342 (2000) (holding that it is "well established that a vehicle stop at a highway check point effectuates a seizure within the meaning of the Fourth Amendment"); Michigan State Police v. Sitz, 496 U.S. 444, 450, 110 S. Ct. 2481, 2485, 110 L. Ed. 2d 412, 420 (1990); Brower v. County of Inyo, 489 U.S. 593, 597, 109 S. Ct. 1378, 1381, 103 L. Ed. 2d 628, 635 (1989) (fourth amendment seizure "when there is a governmental termination of freedom of movement ***through means intentionally applied***" (emphasis in original)); United States v. Martinez-Fuerte, 428 U.S. 543, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976). ***Cf.*** Berkemer v. McCarty, 468 U.S. 420, 440, 104 S. Ct. 3138, 3150, 82 L. Ed. 2d 317, 334-35 (1984) (stating that "noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not `in custody' for the purposes of Miranda"). The question is whether a suspicionless traffic roadblock or checkpoint stop offends the search and seizure clause of either the FSM or Kosrae Constitution.

At issue in Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979), was a suspicionless, roving traffic stop where a police patrolman randomly stopped an automobile for the purposes of checking the driver's license and registration. The court noted that fourth amendment protection under the U.S. Constitution establishes a reasonableness standard of conduct by which the discretionary actions of law enforcement personnel are to be measured in order to preclude the arbitrary invasion of an individual's security and privacy. Id. at 653-54, 99 S. Ct. at 1396, 59 L. Ed. at 667. The reasonableness of a government practice, and hence its permissibility, is measured by weighing the degree of invasion of the protected interest against the "promotion of legitimate governmental interests." Id. at 654, 99 S. Ct. at 1396, 59 L. Ed. 2d at 667-68 (footnote omitted). The court emphasized that the reasonableness standard "requires at a minimum, that the facts upon which an intrusion is based be capable of measurement against `an objective standard,' whether this be probable cause or a less stringent test." Id. at 654, 99 S. Ct. at 1396, 59 L. Ed. 2d at 668

(footnotes omitted). Because the random stops at issue were subject to the unfettered exercise of discretion on the part of the police officer making the stop, the court found it to be unreasonable. Id. at 662-63, 99 S. Ct. at 1401, 59 L. Ed. 2d at 673-74. The court stated that its holding did "not preclude the State of Delaware or other States from developing methods for spot checks [of driver's license and registration] that involve less intrusion or that do not involve the unconstrained exercise of discretion. ***Questioning of all oncoming traffic at roadblock-type stops is one possible alternative.***" Id. at 663, 99 S. Ct. at 1401, 59 L. E. 2d at 673-74 (footnote omitted) (emphasis added).

In City of Indianapolis v. Edmond, 531 U.S. 32, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000), the court dealt with a roadblock established for the purpose of drug interdiction, as opposed to the specific twin highway safety related concerns of the licensing of driver's and vehicle registration. The Edmond court noted that it had "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing," 531 U.S. at 41, 121 S. Ct. at 454, 148 L. Ed. 2d at 343, and that it was "particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends." 531 U. S. at 43, 121 S. Ct. at 455, 148 L. Ed. 2d at 344. The court found that it could not "sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist have committed some crime," 531 U.S. at 44, 121 S. Ct. at 455, 148 L. Ed. 2d at 345, and held that because the primary purpose of the drug interdiction checkpoint stops was "ultimately indistinguishable from the general interest in crime control," the checkpoints were violative of the fourth amendment of the United States Constitution. 531 U.S. at 48, 121 S. Ct. at 458, 148 L. Ed. 2d at 348. At the same time, the Edmond court emphasized that "[i]t goes without saying that our holding today does nothing to alter the constitutional status . . . of the type of traffic checkpoint that we suggested would be lawful in Prouse." 531 U.S. at 47, 121 S. Ct. at 457, 148 L. Ed. 2d at 347.

The facts of neither Prouse nor Edmond involve the type of stop at issue here, where all oncoming traffic was being stopped. In that respect, the statement from Prouse that "[q]uestioning of all oncoming traffic at roadblock-type stops is one possible alternative," 440 U.S. at 663, 99 S. Ct. at 1401, 59 L. E. 2d at 674 (footnote omitted), is dicta. However, it is also an unqualified pronouncement, subsequently confirmed in Edmond, that the United States Supreme Court views a stop of this kind as a reasonable seizure under the fourth amendment of the U.S. Constitution: "the Prouse court specifically recognized the states' right to check drivers' documentation by methods that do not involve the unconstrained exercise of discretion, including `[q]uestioning of all oncoming traffic at roadblock-type stops.'" State v. Greenberg, 607 P.2d 530, 535 (Kan. Ct. App. 1980) (quoting Prouse, 440 U.S. at 663, 99 S. Ct. at 1401, 59 L. Ed. 2d at 673-74). In this regard we are not persuaded that Sigrah's characterization of U.S. law in this area as "unsettled" is a fair one. Kosrae is closer to the mark when it states that Sigrah takes a position "directly contrary to settled law." Appellee's Br. at 13 (June 16, 2003).

Looking to the rationale of Prouse and Edmond, we hold that the standard by which the actions of law enforcement personnel is to be measured in conducting a traffic stop like the one at issue is one of reasonableness. To ensure against the arbitrary invasion of an individual motorist's security and privacy interests, the stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate, rational

program[1] intended to make the state's roads safer, and not as a means of circumventing either the probable cause, Prouse, 440 U.S. at 654, 99 S. Ct. at 1386, 59 L. Ed. 2d at 668, or reasonable, articulable suspicion, United States v. Hensley, 469 U.S. 221, 232, 105 S. Ct. 675, 682, 83 L. Ed. 2d 604, 614 (1985), standards that would otherwise apply to the stop of an individual motorist. The manner of stopping must be in a rational, predetermined way. Either all motorists must be stopped, or the stops must occur in a specified incremental manner, such as every second, every fifth, etc., motorist. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. With these safeguards in place, the state's interest in promoting roadway safety more than outweighs the intrusion upon the privacy of and momentary inconvenience to the stopped motorists.

In applying this test to the facts of this case, we hold that the stop at issue passes constitutional muster. The roadblock here was a minimal intrusion because it was announced in advance. There was no unfettered discretion exercised by the officers conducting the stops because every vehicle was stopped and questioned. We also think it a fair point that in a small community like Kosrae where people generally know one another – in this case Sigrah was stopped by a relative – a lesser degree of apprehensiveness and hence a lesser degree of intrusion obtains where one is stopped by police officers whose identity is known. Moreover, a checkpoint stop like the one at issue constitutes a mechanism for enforcing applicable laws. The roadblock itself, together with its prior announcement, is a means of causing people to take action to comply with applicable laws. Thus on the facts before the court, the stop at issue was conducted in such a way that the rights conferred upon our citizens under both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution are afforded adequate protection. The challenged roadblock stop is not an unreasonable seizure.

In conclusion, we address one additional point. Sigrah urges that Kosrae has offered no statistics in support of the checkpoints as means of increasing roadway safety. An analysis of the effectiveness of such stops, either based on or supported by statistical evidence, might well prove to be a useful tool in analyzing the issues presented by this case. But apart from this concern, we note the Prouse court's observation:

> Although the record discloses no statistics concerning the extent of the problem of lack of highway safety, in Delaware or in the Nation as a whole, we are aware of the danger to life and property posed by vehicular traffic and of the difficulties that even a cautious and an experienced driver may encounter. We agree that the States have a vital interest in insuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration and vehicle inspection requirements are being observed. Automobile licenses are issued periodically to evidence that the drivers holding them are familiar with the rules of the road and are physically qualified to operate a motor vehicle. The registration requirement and, more pointedly, the related annual inspection requirement in Delaware are designed to keep dangerous automobiles off the road. Unquestionably, these provisions, properly

[1] Kosrae's interest in promoting vehicle safety is reflected in the following statues: Kos. S.C. § 17.701 ***et seq.*** (including provisions relating to the erection of traffic signs and markings); Kos. S.C. § 17.201 ***et seq.*** (vehicle registration); Kos. S.C. § 17.301 ***et seq.*** (licensing of drivers); and Kos. S.C. § 17.401 ***et seq.*** (vehicle safety requirements and particularly § 17.407 relating to annual inspections).

administered, are essential elements in a highway safety program.

440 U.S. 658, 99 S. Ct. at 1398-99, 59 L. Ed. 2d at 670-71. We think it sufficiently plain that automobiles by their intrinsic nature implicate safety concerns. It does not take a statistical analysis to make the point that they are powerful mechanical devices that must be operated in a responsible manner, and that the operation of an automobile that is not roadworthy creates a hazard for other motorists and pedestrians. Thus we are not persuaded that a statistical analysis, however useful it might prove, is a critical predicate to a finding that Kosrae's program of roadway safety is constitutional.

D

Sigrah's third assignment of error is that Kos. S.C. § 13.702 is unconstitutional because it "authorizes the police to compel a person to give evidence that may be used against him in a criminal case in violation of Article II, § 1(f) of the Kosrae Constitution, and Article IV, § 7 of the FSM Constitution." As amended by L.B. No. 7-265 (Apr. 25, 2001), Kos. S.C. § 13.702 is in its entirety as follows:

> (1) Unauthorized operation of a motor vehicle is operating a motor vehicle on a road without possessing a valid license or learner's permit or operating a motor vehicle on a road in violation of Sections 17.203, 17.205 or 17.206.
>
> (2) To possess a valid license or learner's permit means that every driver shall have his or her driver's license or learner's permit, which must be fully legible with no portion of such license or permit faded, altered, mutilated, or defaced in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon the demand of a law enforcement officer.
>
> (3) Unauthorized operation of a motor vehicle is a category 4 misdemeanor.

Thus, Kos. S.C. § 13.702 requires a driver to have his driver's license in his possession while operating a motor vehicle, and further requires that the driver display the license to a police officer upon being requested to do so.

We note at the outset that commenting on the similar Kansas statute "requiring every driver to carry a license and display it on demand of a peace officer," the court in Greenberg, 607 P.2d at 534, stated that the "driver's license requirement has never been seriously challenged so far as we know." While proof of the proverbial negative is ever an illusive undertaking, we, like the Kansas court, have found no case challenging this aspect of a driver's license statute. No such case exists in the FSM; Sigrah has brought no such case to the court's attention; and we have found no United States case that supports such a proposition.

Notwithstanding this state of the law, Sigrah contends that because the Kosrae statute requires him to "display the same [i.e., his license] upon the demand of a law enforcement officer," 13 Kos. S.C. § 702, the statute violates his right against self-incrimination. Sigrah reasons that if a driver does not have his license in his possession, then the fact that he responds negatively to the officer's request constitutes self-incrimination. Both Article IV, § 7 of the FSM Constitution and Article II, § 1(f) of the Kosrae Constitution provide identically that "[a] person may not be compelled to give evidence that may be used against him in a criminal case."

The privilege against self-incrimination is designed "to prevent [the] use of devices to subvert the will of an accused." FSM v. Jonathan, 2 FSM Intrm. 189, 196 (Kos. 1986). This protection has its roots in the fifth amendment of the United States Constitution. FSM v. Edward, 3 FSM Intrm. 224, 230 (Pon. 1987). The fifth amendment to the United States Constitution provides that no person "shall be compelled in a criminal case to be a witness against himself." Historically, the linchpin of this principle has been to prohibit the compelling of "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, 914 (1966); Counselman v. Hitchcock, 143 U.S. 547, 584, 12 S. Ct. 195, 198-99, 35 L. Ed. 1110, 1121 (1892) (holding that the fifth amendment "prohibit[s] the compelling of testimony of a self-incriminating kind from a party or a witness.") The protection does not extend to non-testimonial evidence such as fingerprints, United States v. Kelly, 55 F.2d 67 (2d Cir. 1932), handwriting exemplars, Gilbert v. California, 388 U.S. 263, 87 S. Ct. 1951, 18 L. Ed. 2d 1178 (1967), voice exemplars, United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967), or blood samples for purposes of determining a person's blood alcohol level, Schmerber v. California, 384 U.S. 757, 85 S. Ct. 1826, 16 L. Ed. 2d 908 (1966). More pertinently for the purposes at hand, the United States Supreme Court held in South Dakota v. Neville, 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1983), that the admission into evidence of a person's refusal to take a blood alcohol test does not constitute self-incrimination as proscribed by the U.S. Constitution's fifth amendment.

The Neville reasoning elucidates here, where Sigrah was convicted of a violation of Kos. S.C. § 13.702 based on his failure to produce a valid driver's license to the requesting officer after he had been stopped at a traffic roadblock. The Kosrae statute by its terms does not compel testimony. Rather, in literal terms it requires – and to this extent may be said to "compel" – an act: "every driver . . . ***shall display*** [his license] upon the demand of a law enforcement officer" (emphasis added). Many courts have relied on the distinction between testimony and action in finding that the act of failing to comply with a statutorily mandated procedure such as submitting to a blood alcohol test is not a communication protected by the privilege against self-incrimination. Neville, 459 U.S. at 560-61, 103 S. Ct. at 921, 74 L. Ed. 2d at 757, and cases cited in n.11. At the same time, the "minority view" is that refusal to take a potentially incriminating sobriety test is "`a tacit or overt expression and communication of defendant's thoughts.'" 459 U.S. at 561, 103 S. Ct. at 921, 74 L. Ed. 2d at 757 (citing the case below, State v. Neville, 312 N.W.2d 723, 726 (S.D. 1981)). It is a valid point here that the Kosrae statute by its terms requires a specified conduct – i.e., the display of a valid driver's license – and not a testimonial or communicative response to the officer's request to produce a valid driver's license.

However, the Neville court grounded its conclusion that admission into evidence at trial of a refusal to take a sobriety test does not offend the privilege against self-incrimination on the basis that a refusal to take such a test is not "compelled" within the meaning of the fifth amendment's proscription against self-incrimination. 459 U.S. at 562-64, 103 S. Ct. at 922-23, 74 L. Ed. 2d at 757-59. We also take the view that the larger question here is not whether Kos. S.C. § 13.702 technically requires an act versus a statement, but whether Sigrah's failure to produce his license was compelled by Kosrae in violation of the right against self-incrimination guaranteed by both Article II, § 1(f) of the Kosrae Constitution, and Article IV, § 7 of the FSM Constitution. In Neville the court noted that as opposed to coercing refusal, "the State want[ed] respondent to choose to take the test." 459 U.S. at 564, 103 S. Ct. at 922, 74 L. Ed. 2d at 759. The Neville court acknowledged that "the choice to submit or refuse to take a blood-alcohol test will not be an easy or pleasant one for a suspect to make. But the criminal process often requires suspects and defendants to make difficult choices." Id. at 564, 103 S. Ct. at 922-23, 74 L. Ed. 2d 759. The Neville court concluded that the state had done nothing to compel the defendant to refuse to take the test, and held that "a refusal to take a

blood-alcohol test, after a police officer has lawfully requested it, is not an act coerced by the officer, and thus is not protected by the privilege against self-incrimination." Id. at 564, 103 S. Ct. at 923, 74 L. Ed. 2d at 759.

While the Kosrae statute may be said to "compel" compliance with its requirement that a driver display his driver's license upon request by a police officer, it is manifestly the case that in such a sense every law specifying a positive duty and a penalty for failure to comply with that duty may be said to "compel" the required conduct. But this generalized characteristic of all effectively enforceable laws is a different question from whether Kosrae coerced Sigrah's failure to display his license when the police officer requested him to do so. Here, just as in Neville, Kosrae wanted Sigrah to display his valid driver's license, and the police officer who stopped him specifically requested him to do so. In response, Sigrah did not display his license, and for that matter could not have done so had he wanted to, because he did not have one in his possession. Thus he cannot be said to have had a meaningful choice between choosing to display his license, and not displaying it. But that state of affairs had nothing to do with any compulsory, self-incriminatory aspect of Kos. S.C. § 13.702, and everything to do with Sigrah's own conduct in failing to have his license in his possession at the time he was stopped. We reiterate that the touchstone of the privilege against self-incrimination is compulsion. People v. Taylor, 618 P.2d 1127, 1138 (Cal. 1980) (en banc). Sigrah may not lay his own conduct in failing to have his license in his possession, and failing to produce it upon the officer's request, at the statute's feet by claiming that it requires him to incriminate himself. Under no reading of the facts can the Kosrae police officer who requested Sigrah to produce his license be said to have prevented him from displaying his license, or to have engaged in any other type of coercive conduct. The short of it is that Kosrae did not compel Sigrah's failure to produce his driver's license.

Accordingly, we reject Sigrah's contention that 13 Kos. S.C. § 13.702 "is unconstitutional on its face because it automatically makes one guilty of a crime for the invocation of the constitutional right not to be compelled to give evidence against oneself." Appellant's Br. at 37 (Mar. 10, 2003). The constitutional privilege against self-incrimination is not meant to be refuge for those who, by their own conduct and without any coercive action on the part of the state, fail to comply with the reasonable requirements of a valid statute. Accordingly, Sigrah's failure to produce his driver's license upon a police officer's request in contravention of the requirement of Kos. S.C. § 13.702 does not constitute "compelled [] evidence" within the meaning of either Article II, § 1(f) of the Kosrae Constitution, or Article IV, § 7 of the FSM Constitution, so as to render Kos. S.C. § 13.702 unconstitutional under either of those constitutional provisions.

E

For the foregoing reasons, we affirm the trial court's decision in its entirety.

* * * *

SEPARATE STATEMENT of Associate Justice Yinug

MARTIN G. YINUG, Associate Justice:

I join the majority in this opinion, which I have authored and which represents a consensus of views. However, with respect to part C. of the opinion, I join the majority with misgivings and a sense of uneasiness.

We hold today that without individualized suspicion of any kind, state law enforcement personnel may stop a motorist traveling on a public road when the purpose for doing so is to request specific information from the motorist: if the motorist is unable to produce the requested information, he is subject to a citation for a criminal traffic violation. Section 5 of the Declaration of Rights of the FSM Constitution says that "the right of the people to be secure . . . against unreasonable search, seizure, or invasion of privacy may not be violated." We are stewards of this right in sacred trust, and if we defer to its mandate in the way I think we must, then I suggest that Section 5 of the Declaration of Rights means that we must tread very carefully indeed where we walk today.

I believe that our holding today, regardless of the limitations that we have imposed to make the challenged practice of Kosrae roadblocks pass constitutional muster, makes inroads into the important right guaranteed by Section 5. I can accept this because of the nature of the public roadway. In order for anything other than chaos to reign, there must be specific rules to govern the operation of vehicles traveling on our roads. Imagine the state of affairs that would result if there was no rule that vehicles must travel on the right side of the road; that they must stop at stop signs and obey traffic signals; that one vehicle must yield the right-of-way to another in certain circumstances; and that they must heed restrictions on the maximum speed at which they may operate. If travel on a public road is viewed in this context, it seems plain to me that although this is not a highly regulated activity in the sense that cases have discussed (***see, e.g.***, Donavan v. Dewey, 452 U.S. 594, 101 S. Ct. 2534, 69 L. Ed. 2d 262 (1981) (statutorily authorized warrantless inspection of mines); United States v. Biswell, 406 U.S. 311, 92 S. Ct. 1593, 32 L. Ed. 2d 87 (1972) (statutorily authorized warrantless search of a federally licensed gun dealer)), it is from every practical viewpoint an activity that is by its intrinsic nature undeniably subject to regulation. Moreover, it could scarcely be conducted in a more public arena. We are not talking about an activity that is conducted with the expectation of privacy and freedom in one's own home, or as the proverb has it, in one's own castle. The sanctity of private dwellings, ordinarily afforded the most stringent constitutional protection, is not implicated by our holding today. Further, the nature of the intrusion here is minimal. The motorist is only detained for a time sufficient for the officer to issue the citation, and then is permitted to go on his way even if he cannot produce his license or his vehicle registration. Thus I am able to accept that a state, for the good of all who use a public roadway, may stop a motorist traveling on a motorway to insure that he has complied with licensing and vehicle registration requirements where those two requirements are reasonably related to insuring the safety of the public on the roadway.

What concerns me is the rationale under which we permit the law enforcement conduct at issue here. In Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967), the United States Supreme Court validated administrative inspections for the purpose of insuring the health code compliance of residential dwelling units. Holding that such inspections fell within the ambit of the Fourth Amendment to the United States Constitution, the court nevertheless relied on the "reasonableness" requirement of the Fourth Amendment, and not traditional criminal law probable cause. 387 U.S. at 534, 87 S. Ct. at 1734, 18 L. Ed. 2d at 938-39. The court noted that the inspection was not to obtain evidence of criminal action, but "merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulatory ordinances." 387 U.S. at 530, 87 S. Ct. at 1731, 18 L. Ed. 2d at 936. If we analyze exactly what it was the police were seeking here, then I think we must say that it was compliance with a regulation that was part of a larger program for insuring public road safety, just as in Camara the inspections were undertaken as part of a larger program to insure safe housing. In practical terms, this means that the Kosrae police officers were seeking to establish that statutorily set conditions, those of possessing a valid driver's license and having one's vehicle registered, had been met. In this sense, they were looking for exactly the same thing that the building inspectors in Camara were – i.e., compliance with

the governing statute – and were doing so on terms less intrusive than the inspectors in Camara, who were required to enter dwellings in order to make the inspections. Just as in Camara, the Kosrae police officers were not engaged in the pursuit of evidence of traditional, malum in se criminal activity, although in both Camara and the case at bar, criminal penalties attached if the prescribed conditions were not met.

I am hard pressed to see how the facts of this case are meaningfully different from Camara. I find it difficult to analyze this case without accepting the simple reality, as I have alluded to above, that driving on a public road a motorist is participating in an activity that is, and must be for the public good, regulated in order insure that those who participate in it are not placing life and limb at risk. Just as the Camara court felt that the procedures used to enforce the building code requirements were reasonable under the fourth amendment of the United States Constitution applying a reasonable standard – as opposed to traditional criminal law probable cause principles – so I conclude that taking all the facts and circumstances of the stop that we have discussed in this opinion into account, the stop to insure compliance with the Kosrae statute requiring a motorist to be in possession of a valid driver's license and to have his vehicle registered was reasonable under Section 5 of the Declaration of Rights of the FSM Constitution, and Article II, Section 1(d) of the Kosrae Constitution, both of which proscribe ***un***reasonable searches and seizures.

The fact that a roadway traffic stop is involved does not to my mind succeed in removing this case from the larger rationale of Camara, and placing it exclusively within the reach of U.S. traffic stop cases. By my lights, if I could not justify the activities of Kosrae police in this case under the principles of Camara, then I very much question whether I could join the majority. I find it undeniable that if this case is viewed only in light of probable cause, then it stands for the proposition that law enforcement personnel may stop a motorist traveling on a public road without any cause whatever, probable or otherwise. I find that an ominous proposition. While all cases must turn on their own facts, I suggest that we must be chary indeed of going beyond where we have stepped today.

With these reservations in mind, I join the majority.

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