

Ongesii v. ROP, 5 ROP Intrm. 136 (1995)
SABASTIAN ONGESII,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 6-95
Criminal Case No. 166-95

Supreme Court, Appellate Division
Republic of Palau

Order on appellant's motion for release pending appeal
Decided: November 3, 1995

Counsel for Appellant: Martin Wolff

Counsel for Appellee: Jon Hinck, Acting Attorney General

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and PETER T. HOFFMAN, Associate Justice.

¶137

NGIRAKLSONG, Chief Justice:

Sebastian Ongesii moves for release pending appeal. The Government opposes the motion. Ongesii was tried and convicted of possession of ammunition. He has been ordered to begin his jail term on November 3, 1995, and he asks the Court to release him while his appeal of the conviction is pending. For the reasons stated below, the Court denies the motion.

Neither party has requested oral argument. After reviewing the briefs submitted by the parties and the record as a whole, we conclude that oral argument would not materially assist the Court in ruling on the motion. Accordingly, pursuant to Rule of Appellate Procedure 34(a), this motion is ordered submitted on the briefs without oral argument. *See Diberdii Lineage v. Iyar*, 5 ROP Intrm. 61 (1995).

Under ROP Rule of Appellate Procedure 9, release pending appeal is appropriate only if "(1) the appellant is not likely to flee or pose a danger to the safety of any person or the community if released, and (2) the appeal raises a substantial question of law or fact which is sufficiently important to the merits that a contrary appellate ruling is likely to require the person's release or a new trial." *King v. ROP*, 5 ROP Intrm. 131, 132 (1995). The trial court found that Ongesii does not pose a danger to the community and that, with appropriate bail conditions, he is not likely to flee.¹ The trial court reasoned that Ongesii is not entitled to release pending appeal

¹ In its opposition to Ongesii's motion for release pending appeal, the Government

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because he had not presented a substantial question.

"To be substantial within the meaning of Rule 9(b)(2), the question must be a 'toss-up or nearly so.'" *Id.* at 133 (quoting *Minor v. ROP*, 4 ROP Intrm. 143, 143-44 (1994)). In his motion to this Court, Ongesii argues that he has presented a substantial question through his argument that the trial court abused its discretion in its management of discovery.

¶138 The record presently before the Court reflects that, on June 18, 1995, customs officers at Palau International Airport found firearm ammunition in a cooler belonging to Ongesii. Ongesii contends that, in a response to his discovery request, the Government initially stated that it would not introduce into evidence statements made by Ongesii. Later, the prosecution stated that it intended to call three witnesses who would testify about statements that Ongesii had made. The trial court continued the trial for two weeks to give Ongesii an opportunity to prepare for that testimony.

"Whether to impose a discovery sanction is within the discretion of the trial judge." *U.S. v. Andrus*, 775 F.2d 825, 849 (7th Cir. 1985). This Court reviews such a ruling for abuse of discretion. *Id.*; see *Tmetuchl v. Kohn*, 5 ROP Intrm. 81, 83 (1995) (civil case stating that the "trial court has wide discretion in managing discovery and . . . we will uphold the trial court's discovery decisions unless, in the totality of the circumstances, its rulings are seen to be a gross abuse of discretion resulting in fundamental unfairness in the trial of the case").

Under Rule 16(d)(2) of the ROP Rules of Criminal Procedure, a trial court has a wide range of available sanctions for violation of discovery rules. A trial court may "grant a continuance . . . or enter such other order as it deems just under the circumstances." Ongesii argues that the trial court abused its discretion by refusing to suppress evidence regarding the statements. The continuance that the trial court ordered is specifically listed as a tool that a trial court may use as a remedial measure, and Ongesii has not shown how he was impeded in his preparation as a result of the Government's untimely disclosure. See *Andrus*, 775 F.2d at 849.

Although Ongesii's appeal may succeed after the panel has had the opportunity to evaluate the parties' briefs and the designated record, nothing in Ongesii's motion or the materials presently before this Court establishes a substantial question of law or fact.

For these reasons, the Court denies the request.

contends that Ongesii does pose a flight risk. This Court need not resolve that issue or whether Ongesii poses a danger because Ongesii has not presented a substantial question on appeal. See *id.*