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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. ELDEN DELA CRUZ, Defendant.	CRIM. CASE NO. 13-0154 ORDER DENYING DEFENDANT'S MOTION TO DISMISS INFORMATION FOR INSUFFICIENCY OF EVIDENCE

I. INTRODUCTION

This matter came before the Court on October 9, 2013 at 9:00 a.m. on Defendant's motion to dismiss. Defendant Elden Dela Cruz was present and represented by Janet King. The Commonwealth was represented by Assistant Attorney General Brian Flaherty.

Defendant Dela Cruz is charged with Assault and Battery, in violation of 6 CMC § 1202(a), and Disturbing the Peace, in violation of 6 CMC § 3101(a). On August 23, 2013, Defendant filed a motion to dismiss the information for insufficiency of evidence.

On October 8, 2013, less than twenty-four hours before the scheduled hearing, the Commonwealth filed a motion requesting the Court to grant leave for the Commonwealth to file an untimely opposition. The Court denied the Commonwealth's request, and makes its ruling based on a careful review of Defendant's filings, oral argument and applicable law.

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II. LEGAL STANDARD

Rule 12(b) of the Commonwealth Rules of Criminal Procedure allows defendants to bring pretrial motions concerning "[a]ny defense, objection, or request which is capable of determination without the trial of the general issue." Plainly, the rule does not allow motions that require the "trial of the general issue." NMI R. Crim. Pro. 12(b). A review of the sufficiency of the evidence is, in essence, a trial of the general issue. Thus, it is not proper for a defendant to challenge the information based on inadequacy of evidence.[1] *See United States v. Jensen*, 93 F.3d 667, 669 (1996) ("A motion to dismiss the indictment cannot be used as a devise for a summary trial of the evidence"); *United States v. Critzer*, 951 F. 2d 306, 307 (11th Cir. 1992); *United States v. Mann*, 517 F.2d 259, 267 (5th Cir. 1975); and *United States v. King*, 581 F.2d 800, 801 (1978).

IV. DISCUSSION

Here, Defendant Dela Cruz moves to dismiss the information arguing that there is insufficient evidence to support it. Along with the motion, Defendant submitted a declaration signed by the alleged victim. Defendant argues that the content of the declaration "disproves and counters the essential elements" of the crimes for which he is charged; thus the information filed against him should be dismissed. Def.'s Mot. at 6. Defendant Dela Cruz does not challenge the sufficiency of the Information. In effect, Defendant asks the Court to make a final determination on this case based only on the pretrial evidence presented by Defendant but provides no legal authority that supports this request.[2] Rule 12(b) does not support such a motion because weighing the

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[1] Because the Commonwealth Rules of Criminal Procedure are based on the Federal Rules of Criminal Procedure, federal case law on their interpretation is instructive. *Commonwealth v. Attao*, 2005 MP 8 ¶ 9 n.7.

[2] At the hearing, the Court asked counsel for Defendant to cite legal authority in support of the position that a pretrial determination of sufficiency of the evidence was proper. Defense counsel cited four cases, only one of which was cited in Defendant's motion. The Court has reviewed all four cases and finds no support for Defendant's position. None of the cases cited by defense counsel involve a pretrial dismissal based on sufficiency of the evidence. In *Hamling v. United States*, 418 U.S. 87, 117 (1974), the indictment's sufficiency turned on whether the underlying statute was vague. The *Hamling* Court briefly reviewed sufficiency of the evidence but only as it related to the jury's verdict, not the sufficiency of the indictment. *Id.* at 124. In *United States v. Welborn*, 849 F.2d 980, 983 (5th Cir. 1988), the

evidence as requested by Defendant is a "trial of the general issue." *See* NMI R. Crim. Pro. 12(b). Moreover, it is widely acknowledged by federal courts that it is improper to weigh the sufficiency of evidence pretrial. *See e.g., United States v. Critzer*, 951 F. 2d 306, 307 (11th Cir. 1992).

V. CONCLUSION

Accordingly, Defendant's motion to dismiss is **DENIED**.

IT IS SO ORDERED this 9th day of October, 2013.

JOSEPH N. CAMACHO
Associate Judge

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defendants sought dismissal of a second indictment arguing that the prosecution dismissed the first indictment under Rule 48(a) of the Federal Rules of Criminal Procedure in bad faith, that the trial court abused its discretion by allowing dismissal of the first indictment, and that the second indictment violated the Speedy Trial Act. Although the *Welborn* court considered whether the prosecution offered sufficient reasons for requesting the dismissal of the first indictment, the opinion contained no mention of the evidence underlying either the first or second indictment. *See id.* at 985. In *United States v. Mechanik*, 475 U.S. 66, 68 (1986) the motion to dismiss the indictment was based on a violation of a procedural rule during grand jury proceedings. Finally, in *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), the Court reviewed an indictment dismissal based on prosecutorial misconduct. The District Court found that the prosecutors caused evidence they knew to be false to be presented to the grand jury. The Supreme Court disagreed, finding instead that there was nothing in the record to indicate that the prosecutors knew the evidence was unreliable, and that "the mere fact that evidence itself is unreliable is not sufficient to require a dismissal of the indictment. *See Costello v. United States*, 350 U.S. 359, 363 (1956) (holding that a court may not look behind the indictment to determine if the evidence upon which it was based is sufficient)." *Id.* at 261.