

2015 FEB 24 AM 7:57

*fw*

BY \_\_\_\_\_  
DEPUTY CLERK OF COURT

1 **FOR PUBLICATION**

2  
3 **IN THE SUPERIOR COURT**  
4 **OF THE**  
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE** )  
7 **NORTHERN MARIANA ISLANDS,** )  
8 **Plaintiff,** )  
9 **v.** )  
10 **JOSEPH JONES VILLAGOMEZ,** )  
11 **Defendant.** )

**CRIMINAL CASE NO. 14-0088**  
**ORDER DENYING DEFENDANT'S**  
**MOTION TO DISMISS IN PART;**  
**ORDER DEFERRING FURTHER**  
**RULINGS PENDING TRIAL**

12 **I. INTRODUCTION**

13 THIS MATTER came before the Court on February 18, 2015, at 9:00 a.m. in Courtroom 223A.  
14 Assistant Attorney General Shannon Foley appeared for the prosecution, Commonwealth of the Northern  
15 Mariana Islands. Assistant Public Defender Eden Schwartz appeared for the Defendant, Joseph Jones  
16 Villagomez.

17 Based on review of the filings, oral arguments, and applicable law, the Court hereby **DENIES**  
18 Defendant's Motion to Dismiss in part. The Court also **DEFERS** further rulings pending its trial in this  
19 matter.

20 **II. BACKGROUND**

21 On September 10, 2014, the Commonwealth charged Joseph Jones Villagomez ("Defendant") with  
22 two counts of disturbing the peace under 6 CMC § 3101(a). ("(a) A person commits the offense of disturbing  
23 the peace if he or she unlawfully and willfully does any act which unreasonably annoys or disturbs another  
24 person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach  
25 of the peace.").

1 **Count I: Disturbing the Peace**

2 Count I of the Information alleges that on or about August 30, 2014, the Defendant unreasonably  
3 annoyed and disturbed the peace of Antonette San Nicholas (“Antonette”), a household member of  
4 Defendant as defined under 6 CMC § 1464, in violation of 6 CMC § 3101(a). The Commonwealth alleges  
5 that Defendant came to Antonette’s residence during the early morning hours, knocked on her front door,  
6 and caused her to be scared. Information at 1.

7 **Count II: Disturbing the Peace**

8 Count II of the Information alleges that, on the same day, Defendant unreasonably annoyed and  
9 disturbed the peace of Francis San Nicholas (“Francis”) also in violation of 6 CMC § 3101(a). The  
10 Commonwealth alleges that Defendant yelled profanities at Francis, which caused Francis to become angry.  
11 Information at 2.

12 **Defendant’s Motion to Dismiss**

13 In his pre-trial motion made under Rule 12(b) of the Commonwealth Rules of Criminal Procedure  
14 (“Rule 12(b)”), Defendant raises three constitutional challenges to the criminal charges asserted against him.  
15 Defendant requests that the Court dismiss Counts I and Counts II of the Information for the following  
16 reasons.

17 First, Defendant brings a vague-as-applied constitutional challenge to Count I, arguing that 6 CMC  
18 § 3101(a) is vague as applied to the facts of this case. Specifically, Defendant argues that a reasonable person  
19 in Defendant’s position would not have known that arriving at a household member’s residence at an  
20 “inconvenient hour” and knocking on the door would result in criminal consequences. Def.’s Mot. to  
21 Dismiss at 5.

22 Second, Defendant also brings a vague-as-applied constitutional challenge to Count II. Here,  
23 Defendant argues that a reasonable person in Defendant’s position would not have been on notice that  
24 yelling profanities and causing people to become angry would result in criminal consequences. *Id.* at 6.

25 Third, Defendant brings a facial challenge to the constitutionality of 6 CMC § 3101(a). Defendant

1 argues that 6 CMC § 3101(a) violates the First Amendment’s free speech protections as applied to the  
2 Commonwealth through the Fourteenth Amendment – and the Commonwealth’s free speech protections  
3 under Article 1, Section 2 of the Commonwealth Constitution. *Id.* at 7. According to Defendant, the statute  
4 is patently overbroad when speech, including political and symbolic speech, can result in a criminal  
5 conviction if it causes reasonable annoyance to a person – as in the facts alleged in this case. *Id.* at 8.

### 6 **The Commonwealth’s Opposition**

7 In response to Defendant’s vague-as-applied constitutional challenges, the Commonwealth argues  
8 that consideration of additional facts would cure any alleged due process violations. *See* Pl.’s Opp’n at 4-5.  
9 For example, regarding Defendant’s challenge against Count I, the Commonwealth alleges that Defendant  
10 knocked on Antonette’s door at 2 a.m. in the morning under an active Order of Protection. *Id.* at 4. Said  
11 Order of Protection allegedly restricted Defendant from making direct or indirect contact with Antonette.  
12 *Id.*

13 In regards to Defendant’s challenge against Count II, the Commonwealth alleges that Defendant was  
14 drunk. *Id.* at 5. The Commonwealth also alleges that Defendant aggressively used an offensive Chamorro  
15 term against Francis. *Id.* Such aggressive actions by Defendant, the Commonwealth argues, caused Francis  
16 to act in a way that he would not normally engage in. *Id.* According to the Commonwealth, these additional  
17 facts would allow the Court to apply judicial interpretation to find that 6 CMC § 3101(a) is not vague as  
18 applied to Defendant’s actions against Antonette and Francis.

19 And in response to Defendant’s facial challenge against 6 CMC § 3101(a), the Commonwealth  
20 argues that the Court should uphold the law as constitutional because “this Court has not experienced great  
21 difficulty applying the statute in the past . . .”. *Id.* at 5.

### 22 **III. LEGAL STANDARD**

23 Rule 12(b) allows the Court to review “any defense, objection, or request which is capable of  
24 determination” before trial. NMI R. Crim. P. 12(b). A pre-trial motion is generally “capable of  
25 determination” if it involves questions of law, rather than fact. *Cf. United States v. Shortt Accountancy*

1 *Corp.*, 785 F.2d 1448, 1452 (9th Cir. 1986) (relying on Circuit Court decisions from the Fifth and Sixth  
2 Circuit Court of Appeals).

3 But the court, for good cause, may defer ruling on a Rule 12(b) motion until after a trial or until after  
4 the verdict so long as a party’s right to appeal is not adversely affected. NMI R. Crim. P. 12(e); cf. *Shortt*  
5 *Accountancy Corp.*, 785 F.2d at 1452 (“If the pretrial claim is ‘substantially founded upon and intertwined  
6 with’ evidence concerning the alleged offense, the motion falls within the province of the ultimate finder  
7 of fact and must be deferred.”) (citations omitted).

#### 8 IV. DISCUSSION

9 The following paragraphs explain the Court’s rationale for deferring further rulings as to Defendant’s  
10 vague-as-applied constitutional challenges until after trial in this matter. The following paragraphs also  
11 explain the Court’s decision to deny Defendant’s motion to dismiss based on his facial challenge against  
12 CMC § 3101(a).

#### 13 A. The Court Defers Further Rulings on Defendant’s Vague-As-Applied Constitutional Challenges

14 The Court defers further rulings on Defendant’s vague-as-applied constitutional challenges against  
15 Counts I and II of the Information pending trial in this matter. Here, there is good cause for withholding the  
16 Court’s rulings under Rule 12(e) of the Commonwealth Rules of Criminal Procedure (“Rule 12(e)"). In  
17 considering the parties’ arguments, the Court finds that additional facts are necessary to make proper rulings  
18 as to Defendant’s vague-as-applied constitutional challenges. Cf. *United States v. Montilla*, 870 F.2d 549,  
19 552 (9th Cir. 1989), *opinion amended*, 907 F.2d 115 (9th Cir. 1990) (finding that the Court’s “desire to  
20 avoid lengthy duplication of testimony” provided good cause for a deferral of its ruling). Therefore, the  
21 Court finds that deferring its rulings pending trial is appropriate in view of the circumstances.

#### 22 B. The Court Denies Defendant’s Facial Challenge Against 6 CMC § 3101(a)

23 The Court is not persuaded by Defendant’s argument that 6 CMC § 3101(a) is overbroad on its face.  
24 Defendant argues that enforcement of 6 CMC § 3101(a) potentially punishes legitimate speech – to the  
25 extent that “speech alone can cause a conviction if it causes annoyance that is reasonable.” Def.’s Mot. to

1 Dismiss at 8. For example, Defendant argues that political speech is unpleasant to some people and would  
2 expose the speaker to criminal liability under 6 CMC § 3101(a). *See* Def.’s Mot. to Dismiss at 8.

3 However, the Court does not share Defendant’s concerns in view of the limitations the  
4 Commonwealth Supreme Court imposed on 6 CMC § 3101(a). In *Commonwealth v. Inos*, the  
5 Commonwealth Supreme Court limited the application of 6 CMC § 3101(a) to “more than the typical  
6 annoyances and disturbances resulting from the friction of living in a community. It must instead be of  
7 sufficient magnitude that a reasonable person would conclude the acts warranted criminal consequences.”  
8 2013 MP 14 ¶ 20 (imposing a general intent requirement on construction of 6 CMC § 3101(a)).

9 While the Supreme Court in *Inos* declined to address a facial constitutional challenge to 6 CMC §  
10 3101(a) (*Id.* ¶ 11 n.2), this Court finds that the Supreme Court sufficiently limited the scope of 6 CMC §  
11 3101(a)’s reach. Under *Inos*, mere political speech (obnoxious or informative) without something more  
12 would certainly fall under the typical annoyances and disturbances resulting from the friction of living in  
13 a community. Therefore, said speech would not ordinarily expose the speaker to criminal liability under the  
14 Commonwealth’s current interpretation of 6 CMC § 3101(a).

15 In addition, in view of the Supreme Court’s limitation on 6 CMC § 3101(a), the Court finds  
16 Defendant’s reliance on *McCauley v. Univ. of the Virgin Islands* to be misplaced. Defendant cites to  
17 *McCauley* asserting that the Third Circuit Court of Appeals affirmed a lower court’s ruling striking an  
18 “extremely” similar disturbing-the peace-statute as the one in this case. Def.’s Mot. to Dismiss at 8.  
19 Therefore, Defendant argues, this Court should do the same. *Id.*

20 However, the Third Circuit Court of Appeals’s review of the relevant portion of the university  
21 student conduct code (the ordinance prohibiting “conspiring to commit, or causing to be committed any act  
22 which causes or is likely to cause serious physical or mental harm or which tends to injure or actually  
23 injures, frightens, demeans, degrades or disgraces any person . . .”) was limited to issues of plaintiff’s  
24 standing and his as-applied constitutional challenge. *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232,  
25 236, 238, 253 (3d Cir. 2010).

1 While the lower court in *McCauley* appears to have struck down said student conduct code as being  
2 overly broad (*Id.* at 236) the Court struggles to see how the referenced language is extremely similar to the  
3 language contained in 6 CMC § 3101(a). In addition, Defendant has not explained whether the district court  
4 in *McCauley* also considered similar limitations of construction imposed by a higher court, such as those  
5 imposed in *Inos*. Therefore, the Court finds Defendant's arguments unpersuasive.

6 In addition, when bringing a facial challenge to a statute on overbreadth grounds, the movant bears  
7 a heavy burden to persuade the Court that drastic action is necessary. *L.A. Police Dep't v. United Reporting*  
8 *Publ'g Corp.*, 528 U.S. 32, 39 (1999) ("Because of the wide-reaching effects of striking down a statute on  
9 its face at the request of one whose own conduct may be punished despite the First Amendment, we have  
10 recognized that the overbreadth doctrine is 'strong medicine' and have employed it with hesitation, and then  
11 'only as a last resort.'") (quoting *New York v. Ferber*, 458 U.S. 747, 769 (1982)); *Commonwealth v. Mundo*,  
12 2004 MP 13 ¶ 13 ("[T]here is a strong, widely recognized judicial policy in favor of preserving statutes in  
13 the face of constitutional challenges whenever possible."). Defendant has not met his burden. Accordingly,  
14 the Court denies Defendant's motion to dismiss on this ground.


#### 15 CONCLUSION

16 Based on the foregoing, the Court **DEFERS** further rulings pending trial on Defendant's vague-as-  
17 applied constitutional challenges to Count I and Count II of the Information.

18 The Court further **DENIES** Defendant's motion to dismiss as to his facial challenge to the  
19 constitutionality of 6 CMC § 3101(a).

20 This matter will proceed to trial as scheduled on March 4, 2015 at 9:00 a.m. in Courtroom 223A.

21  
22 **SO ORDERED** this 24<sup>th</sup> day of February, 2015.

23  
24   
25 David A. Wiseman, Associate Judge