

1 FOR PUBLICATION

2015 MAR 23 PM 4:08

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

BY: *[Signature]*

| | | | |
|----|---------------------------|---|------------------------------|
| 5 | COMMONWEALTH OF THE |) | CRIM. CASE NO. 14-0142 |
| 6 | NORTHERN MARIANA ISLANDS, |) | |
| 7 | |) | |
| 8 | Plaintiff, |) | |
| 9 | |) | |
| 10 | v. |) | ORDER GRANTING MOTION TO |
| | |) | DISMISS INCEST CHARGE AS |
| | |) | DEFENDANT AND ALLEGED VICTIM |
| | ATALIG, WILLIAM, Jr., |) | ARE NOT SUFFICIENTLY CLOSELY |
| | |) | RELATED AS DEFINED BY LAW |
| | Defendant. |) | |

11 I. INTRODUCTION

12 This matter came before the Court on February 11, 2015 at 9:00 a.m. on Defendant William
13 Atalig Jr.'s Motion to Dismiss. Defendant appeared telephonically from the Rota Courthouse and
14 was represented by Assistant Public Defender Matthew Meyer. The Commonwealth was
15 represented by Assistant Attorney General Shannon Foley.

16 Defendant is charged with incest under 6 CMC § 1311.¹ On December 31, 2014, Defendant
17 filed a pre-trial motion to dismiss the incest charge, arguing that the Defendant and the alleged
18 victim are not sufficiently related for the alleged incident to qualify as an act of incest. On January
19
20

21
22 ¹ In the Information filed on December 23, 2014, the Defendant was charged with the following offenses: sexual
23 assault in the first degree under 6 CMC § 1301(a)(1), sexual assault in the second degree under 6 CMC § 1302(a)(1),
24 incest under 6 CMC § 1311(a)(3), assault and battery under 6 CMC § 1202(a), and disturbing the peace under 6 CMC §
3101(a). At the preliminary hearing on December 24, 2014, the court found no probable cause for the sexual assault and
disturbing the peace charges. The Commonwealth elected not to pursue the assault and battery charge. With regard to
the sexual assault charges, the court questioned whether there was actually a lack of consent to the alleged encounter.
The issue here is whether this particular incident would qualify as incest within the meaning of the statute.

1 23, 2015, the Commonwealth filed its response, arguing that under Chamorro² kinship terminology,
2 the Defendant would qualify as an uncle of the alleged victim. Thus, according to the
3 Commonwealth, the Defendant and the alleged victim are closely related enough to be covered by
4 the incest statute. On January 30, 2015, the Defendant filed a reply to the government's response,
5 reiterating their argument that, based on a dictionary definition of "uncle," the Defendant and the
6 alleged victim are not sufficiently related to maintain an incest charge against him.

7 On February 13, 2015, the Court issued a sua sponte order requiring the parties to submit
8 supplemental briefs on the issue of determining the exact familial relationship between the
9 Defendant and the alleged victim. The Defendant filed their supplemental brief on February 19,
10 2015, while the Commonwealth filed theirs on February 20, 2015. Both briefs agreed that the
11 alleged victim's mother is the Defendant's first cousin.

12 Based on a review of the filings, oral arguments, and applicable law, the Court **GRANTS**
13 the Defendant's motion and dismisses with prejudice the incest charge under 6 CMC § 1311.
14

15 **II. BACKGROUND**

16 This case arises from an alleged sexual encounter between the 17-year-old female alleged
17 victim and the 18-year-old Defendant.³ According to the parties, the alleged victim is related to the
18 Defendant by blood. The alleged victim's grandmother and Defendant's father are siblings. The
19 alleged victim's mother and the Defendant are first cousins. The primary issue here is whether the
20 alleged victim and the Defendant are closely related enough for the alleged sexual encounter to
21

22
23 ² The Commonwealth stated that the alleged victim identifies as Chamorro. Commonwealth Resp. to Def.'s
24 Mot. to Dismiss 2:27. The Defendant has not contested this point. For the purposes of this order, the Court will treat the
25 Defendant and alleged victim as being Chamorro.

³ Although the alleged victim is a minor, sexual abuse of a minor under 6 CMC §§ 1306-1309 does not apply in
the present case because the Defendant and alleged victim are only a year apart in age.

1 count as incest within the meaning of 6 CMC § 1311 – specifically, whether their relationship
2 qualifies as one of “uncle” and “niece.”

3 4 **III. LEGAL STANDARD**

5 Under 6 CMC § 1311, incest occurs when a person aged 18 or older engages in sexual
6 penetration of a person “who is related either legitimately or illegitimately” to them in one of the
7 following ways: “(1) an ancestor or descendent of the whole or half blood; (2) a brother or sister of
8 the whole or half blood; or (3) an uncle, aunt, nephew, or niece by blood.” 6 CMC § 1311. The key
9 issue here is whether the Defendant is related to the alleged victim as an uncle by blood. The
10 Commonwealth Criminal Code does not define either “uncle” or “niece” for the purpose of
11 determining the applicability of an incest charge. Therefore, the Court turns to the “common and
12 approved usage of the English language” in accordance with the legislative directive set out in 6
13 CMC § 104(b).

14 15 **IV. DISCUSSION**

16 The Defendant argues that an English dictionary definition of “uncle” should apply in this
17 case. Meanwhile, the Commonwealth urges the Court to apply traditional Chamorro kinship
18 definitions, rather than English language terms. The Court is not persuaded by the
19 Commonwealth’s arguments for the following reasons.

20 21 **A. The Commonwealth Criminal Code Requires Application of the Common English 22 Language Meaning of “Uncle”**

23 The Commonwealth Legislature specifically states that words within the criminal code
24 “shall be construed according to the common and approved usage of the English language.” 6 CMC

1 § 104(b).⁴ In other situations, such as intestate succession, the Commonwealth Legislature
2 specifically pointed to local custom in the Commonwealth Code. 8 CMC §§ 2902-2911. The
3 Commonwealth Legislature did not make any reference to local custom in the criminal code,
4 instead pointing to the English language definition of the words used. 6 CMC § 104(b). The English
5 language definition of “uncle” is “the brother of your father or mother or the husband of your aunt.”
6 *Merriam Webster Dictionary*, available at <http://www.merriam-webster.com/dictionary/uncle>.⁵

7 To help understand the nature of the relationship between the Defendant and the alleged
8 victim, the Defendant provided a Table of Consanguinity. *Wikimedia Commons*, available at
9 http://upload.wikimedia.org/wikipedia/commons/2/28/Table_of_Consanguinity_showing_degrees_of_relationship.png. The ancestors that the Defendant shares with the alleged victim are his
10 grandparents. Thus, on the chart, column 2 is used to determine their relationship. The alleged
11 victim’s grandmother is siblings with the Defendant’s father, and thus the Defendant is first cousins
12 with the alleged victim’s mother. The child of one’s first cousin is a first cousin once removed.
13 Although Defendant and the alleged victim are related by blood, their relationship is best described
14 as that of first cousins once removed. *See Appendix A*.

15
16 The Court finds that the Defendant is not an uncle under the common English language
17 definition of “uncle.” Thus, the Defendant and the alleged victim are not sufficiently related for the
18 alleged sexual encounter between them to qualify as incest under 6 CMC § 1311.

20
21 ⁴ If there is ambiguity in the statute as to the meaning of “uncle,” the rule of lenity would apply. The rule of
22 lenity “requires the Court employ a less harsh, and more lenient interpretation, one in favor of the accused.”
23 *Commonwealth v. Manglona*, 1997 MP 28, 12. Courts only apply the rule of lenity as a “last resort.” *Commonwealth v. Sanchez*, 2014 MP 3, ¶ 14 n.6. The rule is only applied if, despite “considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what [the legislature] intended.” *Mararich v. Spears*, ___ U.S. ___, 133 S. Ct. 2191, 186 L. Ed. 2d 275, 298 (2013) (citation omitted).

24 ⁵ The Commonwealth Supreme Court has used dictionaries to supply definitions in the past. *E.g.*,
Commonwealth v. Quitano, 2014 MP 5 ¶ 31; *Owens v. Commonwealth Health Center*, 2011 MP 6 ¶ 18; *Commonwealth v. Hossain*, 2010 MP 21 ¶ 12.

1 **B. Application of Cultural Terms, Where Not Specifically Dictated by the Legislature,**
2 **Would Lead to Inconsistent Results**

3 The Commonwealth argues that Chamorro kinship terminology should be applied in the
4 present case. Commonwealth Resp. to Def.'s Mot. to Dismiss 2:9-3:4. In some instances, the
5 Commonwealth Code references and protects Chamorro and Carolinian custom. When the Code
6 does protect local custom, these references are direct and unambiguous. For example, making wills
7 "in accordance with the historical traditions and customs of the Northern Mariana Islands, be it
8 Chamorro or Carolinian custom," is specifically protected under 8 CMC § 2302. In addition, in
9 intestate succession, Chamorro custom is specifically addressed under 8 CMC §§ 2902-2903, while
10 8 CMC §§ 2904-2911 likewise addresses intestate succession under Carolinian custom. Where local
11 custom is followed and highlighted, the Commonwealth Code specifically outlines the proper times
12 and places for local, indigenous usage. There is no such deference to either Chamorro or Carolinian
13 custom with regard the definition of the term "uncle" within 6 CMC § 1311.⁶

14 In contrast with the fairly rigid English definition of "uncle" described above, kinship terms
15 within Chamorro usage are much more fluid, "extend[ing] relatively widely the limits of their
16 kinship terminology." Alexander Spoehr, Saipan: The Ethnology of a War-Devastated Island 216
17 (1954). Thus, if one were to use a Chamorro definition for who would qualify as an "uncle," the
18 pool of potential "uncles" would be far larger than under the English language definition. In an
19 incest case, such a large pool of potential "uncles" could create confusion as to which relationships
20 would actually qualify as incest.

21 _____
22 ⁶ The Commonwealth Legislature has not applied Chamorro and Carolinian custom to incest. This court is
23 hesitant to extend the scope of 6 CMC § 1311 to include a Chamorro definition to the word "uncle," as this approach
24 would leave open a wide range of questions as to when cultural terms should be applied rather than English language
terms. By expanding the term "uncle" to include cultural definitions, the Court would be allowing vastly inconsistent
and varied results in incest cases. In a jurisdiction as diverse as the Commonwealth, using cultural definitions of
"uncle" would produce inconsistent results depending on the cultural background of the individuals involved.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

V. CONCLUSION

For the foregoing reasons, Defendant’s motion to dismiss with prejudice is **GRANTED**.⁷

IT IS SO ORDERED this 23rd day of March, 2015.



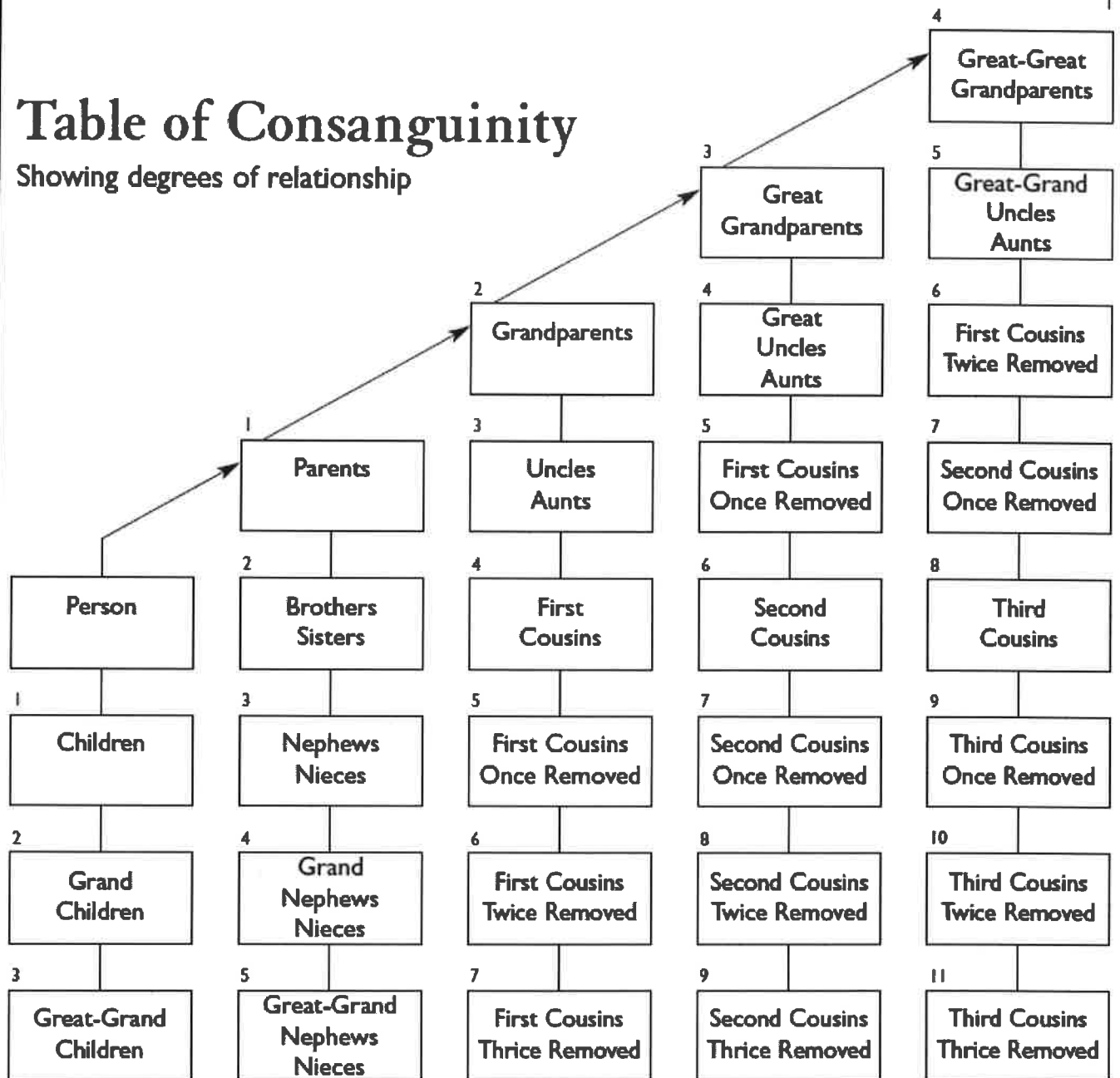
JOSEPH N. CAMACHO
Associate Judge

⁷ The Commonwealth filed a motion to reconsider on January 16, 2015, related to the Court’s finding of no probable cause for sexual assault in the first and second degrees at the preliminary hearing on December 24, 2014. The Defendant filed a motion in opposition on January 28, 2015, and the Commonwealth filed a reply on February 9, 2015. This Court retains jurisdiction until such time that the Court decides and resolves the Commonwealth’s motion to reconsider.

Appendix A – Table of Consanguinity

Table of Consanguinity

Showing degrees of relationship



Source:

http://upload.wikimedia.org/wikipedia/commons/2/28/Table_of_Consanguinity_showing_degrees_of_relationship.png