



FOR PUBLICATION



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Robert C Naraja

CONFIDENTIAL
IN THE SUPERIOR COURT
FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE MATTER OF

JUVENILE CASE NO. 19-0011

K.L.,

A Minor Child.

**AMENDED¹ ORDER GRANTING
JUVENILE’S MOTION TO DISMISS**

I. INTRODUCTION

THIS MATTER² came before the court on September 4, 2019 at 3:30 p.m. in the Mariana Business Plaza for Juvenile’s Motion to Dismiss. Assistant Attorney General Frances Demapan was present and represented the Commonwealth for the Northern Mariana Islands (“Commonwealth”). Assistant Public Defender Heather Zona was present and represented Juvenile, who was present. Following the Motion hearing, the matter was taken under advisement. Having now considered all the briefings and arguments, this Court hereby rules as follows:

II. RELEVANT FACTS

On May 17, 2019, the Commonwealth filed a Rule 3 Complaint of Delinquency charging the Juvenile with Assault with a Dangerous Weapon (Count I), Domestic Violence Assault and Battery (Count II), and Disturbing the Peace (Count III). *See* Complaint of Delinquency (Rule 3(a)CRCrP),

¹ The Court inadvertently omitted the word “not” on page 4, line 12 as underlined in the current amended order.

² To add to the CNMI body of law, the Court publishes this Order balanced with the need to maintain the Juvenile’s confidentiality. Therefore, the Court uses initials for all of the private individuals involved in this matter. NMI R. JUV. P. 6(1).

By order of the Court, Presiding Judge Roberto C. Naraja

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1 filed May 22, 2019. On May 24, 2019, a preliminary hearing was held and the Court determined there
2 was insufficient evidence to establish probable cause for both Assault with a Dangerous Weapon
3 (Count I) and Disturbing the Peace (Count III). *See* Order Finding Probable Cause, filed May 29,
4 2019. After the hearing, the Court dismissed counts I and III of the original complaint without
5 prejudice, but allowed the Assault and Battery charge to proceed. *Id.*

6 The Commonwealth filed an amended complaint with the remaining Assault and Battery charge.
7 *See* Amended Complaint of Delinquency, filed May 28, 2019. The Court granted the original
8 Complaint of Delinquency the same day and the Amended Complaint of Delinquency on May 29,
9 2019. On June 4, 2019, the Commonwealth filed a Second Amended Complaint of Delinquency
10 charging all three original charges; including the Assault with a Deadly Weapon and Disturbing the
11 Peace charges that were already found to have no probable cause. *See* Second Complaint of
12 Delinquency, filed June 4, 2019. On the face of the Second Amended Complaint of Delinquency, the
13 Juvenile Court was without notice or signal that a prior Court ruled in a Preliminary Hearing finding
14 no probable cause on counts I and III. The Juvenile Court, without the notice of the prior action,
15 granted the Second Complaint of Delinquency. Order Granting Second Amended Complaint, filed
16 June 10, 2019. The Juvenile then brought the current Motion to Dismiss with prejudice.

17 III. LEGAL STANDARD

18 Juvenile delinquency proceedings are unique. NMI R. JUV. P. 1. The ultimate aim of all concerned
19 should be to assist the child to become a wholesome member of the community. *Id.*

20 “A Court’s determination that no probable cause exists to support a charge does not bar the
21 prosecution from *re-filing* the charge”. *Commonwealth v. Crisostimo*, 2005 MP 18, ¶17. (emphasis
22 added). A Juvenile complaint or information “may be *amended* at any time before adjudication in the
23 same manner as a criminal case”. NMI R. JUV. P. 3(d) (emphasis added). According to the Rules of

1 Criminal Procedure, the Court may allow an information to be amended “at any time before verdict
2 or finding if no additional or different offense is charged and if no substantial rights of the defendant
3 are prejudiced.” NMI R. CRIM. P. 7(e). (emphasis added).

4 IV. DISCUSSION

5 The Juvenile argues that the Second Amended Complaint should be dismissed since the
6 Commonwealth did not do any additional investigation or have new evidence after the Court found
7 no probable cause. While *Crisostimo* makes clear that the Commonwealth can *re-file* a charge after
8 no probable cause is found, the Commonwealth did not do that here. Thus, this is not an issue before
9 the Court. 2005 MP 18, ¶17. Instead, the issue is *amending* the complaint. The Court did grant the
10 Second Amended Complaint, but the issue of concern is that the Court was not given notice of its
11 procedural history that a Court had earlier found no probable cause to Counts I and III. This notice
12 would allow the Court to determine whether or not to allow the Commonwealth to amend the
13 information pursuant to Rule 7(e). By this failure to notice and for the reasons stated below, the
14 Juvenile’s Motion to Dismiss is **GRANTED**. However, the Motion is dismissed without prejudice.

15 The Commonwealth is perhaps correct that they are not filing any additional or different offenses
16 with their Second Amended Complaint in accordance with NMI R. CRIM. P. 7(e), but it is the Court
17 that decides this and therefore it must go through a process. By not adhering to a process, the
18 likelihood of prejudicing the Juvenile’s due process rights to notice and substantive rights that
19 resulted from a preliminary hearing determination is real. By filing this amended complaint when the
20 Court already found no probable cause and without a hearing to determine any basis or explanation,
21 the Commonwealth takes the merit of a preliminary hearing away, and discounts the Court’s probable
22 cause determination. In doing so, the preliminary hearing is now treated as a matter of procedural
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1 formality rather than ensuring the Juvenile is not being frivolously charged with claims that lack the
2 basic level of probable cause.

3 While the Supreme Court has not stated that new evidence is required for either a refiling or an
4 amended complaint when no probable cause has been found, this Court holds that the Commonwealth
5 must provide notice and request a hearing for the Court to determine whether to allow the amended
6 information. At this hearing, the Court decides based on arguments what the law requires the
7 Commonwealth to do where a prior Court has found no probable cause. It is important to emphasize
8 the need to adhere to certain procedural formalities. Under NMI R. CRIM. P. 7(e), the Court *may* allow
9 a complaint to be amended. The Court will do so only after the Court has ruled on the
10 Commonwealth's motion. This ensures NMI R. CRIM. P. 7(e) is followed with utmost care. Since in
11 this case, there has been no Court hearing and holding made, the Second Amended Complaint of
12 Delinquency is dismissed. Given that the motion is granted, the Court does not need to address
13 Juvenile's other arguments or motions.

14 The parties are reminded that the main goal of Juvenile proceedings is to help children become a
15 wholesome member of the community. NMI R. JUV. P. 1. This should be the driving force for all
16 parties in a juvenile proceeding. Accordingly, the Court reminds the parties to keep this in mind as
17 we all work together to ensure the best interests of the Juvenile are met.

18 **V. CONCLUSION**

19 The Court hereby **GRANTS** Juvenile's Motion to Dismiss without prejudice.

20 **IT IS SO ORDERED** this 6th day of November, 2019.

21
22 /s/
23 **ROBERTO C. NARAJA**
24 Presiding Judge