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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. LIANG, ZHAN Defendant.	)	Criminal Case No. 98-453 **ORDER DENYING DEFENDANT LIANG ZHAN'S MOTION TO DISMISS**

I. PROCEDURAL BACKGROUND

This matter came before the Court on February 3, 1999, in Courtroom C on Defendant's motion to dismiss. Marvin J. Williams, Esq. appeared on behalf of Plaintiff. Robert T. Torres, Esq. appeared on behalf of Defendant Liang Zhan. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

[p. 2]

II. FACTS

On the evening of December 8, 1998, officers from DPS conducted surveillance in the area of Winchell's donut shop in western Garapan pursuant to "Operation Clean-Up" and "Operation Red Light". Defendant Liang Zheng (hereinafter referred to as "Defendant") and another individual were observed in this area approaching Asian pedestrians along the sidewalk on the west side of

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Beach Road.[1] Based on their observations, the officers arrested Defendant and the other suspect and charged with them with prostitution loitering under Public Law 11-19, as codified at 6 CMC § 1341, et seq.

On January 19, 1999, Defendant filed the instant motion to dismiss contending that Public Law 11-19, and specifically § 4, is unconstitutionally vague and overbroad.

III. ISSUES

1. Whether Public Law 11-19, § 4, is unconstitutionally vague and overbroad under the CNMI and United States constitutions?

IV. ANALYSIS

A. Overbreadth

Defendant Liang challenges Public Law 11-19, § 4, as unconstitutionally overbroad both on its face and as applied to him. As such, the case against him must be dismissed.

A law is overbroad if it sweeps within its prohibitions constitutionally protected free speech activities. Grayned v. Rockford, 408 U.S. 104, 115-116, 92 S.Ct. 2294, 2302, 33 L.Ed. 2d 222 (1972). Criminal statutes require particular scrutiny and may be facially invalid if they "make unlawful a substantial amount of constitutionally protected conduct . . . even if they also have a legitimate application.'" City of Houston, Texas v. Hill, 482 U.S. 451, 459, 107 S.Ct. 2502, 2508, 96 L.Ed.2d 398 (1987). Mere presence in a public place cannot constitute a crime. See Shuttlesworth v. Birmingham, 382 U.S.87, 86 S.Ct. 211, 15 L.Ed.2d. 176 (1965). Moreover, there is no question **[p. 3]** but that loitering in a public place is constitutionally protected activity. Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972).

In the instant case, the Court finds that Public Law 11-19, § 4, does not purport to prohibit constitutionally protected conduct or speech. Instead, § 4 prohibits an individual from loitering in a public place while possessing the criminal intent to solicit, induce, entice, or procure another to commit prostitution. An element of specific criminal intent must exist before an individual can be

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[1] *See* Investigative Summary, dated December 9, 1998, by Detective Eddie L. Chen. Although the report indicates that Defendant was seen approaching "Japanese" pedestrians, it is unclear how the officers made the determination of nationality.

arrested under this law. This element of specific criminal intent saves § 4 from being unconstitutionally overbroad. See City of Seattle v. Slack, 784 P.2d 494, 497 (Wash.1989).[2]

Based on the foregoing, the Court finds that § 4 of Public Law 11-19 is not unconstitutionally overbroad on its face.

B. Vagueness

In the alternative, Defendant Liang contends that § 4 of Public Law 11-19 is unconstitutionally vague on its face and as applied to him. As such, the case must be dismissed.

A statute which does not clearly delineate what is prohibited conduct may be void for vagueness. Grayned, supra, 408 U.S. at 108-109, 92 S.Ct. at 2298-2299. This doctrine protects two due process interests. First, it requires "that the laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Id. Second, it prevents arbitrary and discriminatory enforcement by requiring that "laws . . . provide explicit standards for those who apply them." Id.

In the case at bar, the Court finds that the language of Public Law 11-19, § 4, is not vague. The key element here is intent: that the person "*intentionally* solicit, induce, entice, or procure another to commit prostitution". Persons of ordinary intelligence would readily understand what illegal conduct is prohibited by § 4, and as such it is not unconstitutionally vague on its face. Moreover, the Court finds as highly persuasive the decisions from several states who have recognized that a specific **[p. 4]** intent requirement can insulate a prostitution loitering statute from constitutional attack on vagueness. See Coleman v. City of Richmond, 364 S.E.2d 239 (Va.App. 1988); State v. Evans, 326 S.E.2d 303 (N.C.App. 1985); State v. VJW, 680 P.2d 1068 (Wash.App. 1984); City of Seattle v. Jones, 488 P.2d 750 (Wash.1971). In fact, Public Law 11-19 was modeled after the prostitution loitering ordinance at issue in State v. VJW and City of Seattle v. Jones where the Washington courts found that their ordinance was not vague or overbroad.[3]

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[2] The Court notes that the Slack case involved a prostitution loitering statute much like Public Law 11-19, § 4, which was upheld by the Washington Supreme Court as constitutional on the same grounds as discussed herein.

[3] Public Law 11-19 cites to State v. VJW and City of Seattle v. Jones in its Findings and Purpose section. *See* Public Law 11-19, § 1, ¶ 4.

An ordinance that is not vague may nonetheless be vague as applied. Bellevue v. Miller, 536 P.2d 603 (1975). If a statute contains both specific and vague sections, a defendant may challenge the section he or she was charged under as vague. State v. VJW, supra, at 1071.

In support of his argument that § 4 is unconstitutionally vague as applied to him, Defendant offers the case of Wyche v. State, 619 So.2d 231 (Fla.1993).[4] In Wyche, the Florida Supreme Court held that a Tampa prostitution loitering statute was unconstitutionally vague as applied because the list of circumstances in the statute to guide police officers was not exhaustive and left too much to an individual officer's discretion. Although the Wyche list of guiding circumstances are similar to those in § 4 of Public Law 11-19, this Court does not adopt the Wyche court's holding. Instead, this Court adopts the reasoning and holding of the United States Supreme Court in Kolender v. Lawson and which the Wyche court failed to effectively address – that the most important requirement in cases involving the vagueness doctrine is that a legislature establish *minimal guidelines* to govern law enforcement. Kolender, 461 U.S. 352, 357-358, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983)(emphasis added)(loitering statute struck down as unconstitutionally vague). The Court finds that § 4 provides the requisite minimal guidelines to govern law enforcement. Moreover, the Kolender court, in striking down a loitering statute, did not hold that such guidelines be exhaustive and this Court will not interpret the same requirement here.

[p. 5] Likewise, the Court finds the holding in City of Seattle v. Jones to be particularly persuasive in that the instant guidelines are not to be considered exclusive but are provided to merely demonstrate *some* of the types of conduct which may be considered in determining whether an unlawful intent has been manifested. City of Seattle v. Jones, supra, at 752. The enumerated behavior in the guidelines are not prohibited unless accompanied by the intent to solicit another to commit prostitution. Thus, the Court finds that the behavioral guidelines in § 4, along with accompanying "intent" requirement, effectively guide the police to differentiate between constitutionally protected street encounters and acts that reflect the state of mind needed to make an arrest.

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[4] *See* Defendant's Supplemental Memorandum of Points and Authorities, dated February 22, 1999.

Based on foregoing, the Court finds that Public Law 11-19, § 4, is not unconstitutionally vague on its face or as applied to Defendant.

V. CONCLUSION

For all the reasons stated above, Defendant's motion to dismiss is **DENIED**.

So ORDERED this 22 day of February, 1999.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge