

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE, ) CSSC-CRIMINAL CASE NO. 001-2011  
)  
Plaintiff, )  
)  
vs. )  
)  
BOISY MITIPOK, )  
)  
Defendant. )  
\_\_\_\_\_ )

ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE

Repeat R. Samuel  
Associate Justice

Hearing: June 20, 2011  
Decided: June 22, 2011

APPEARANCES:

For the Plaintiff: Dionisialynn Bernard  
State Prosecutor  
Office of the Chuuk Attorney General  
P.O. Box 1050  
Weno, Chuuk FM 96942

For the Defendant: Kachie Sana  
Office of the Public Defender  
P.O. Box 754  
Weno, Chuuk FM 96942

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HEADNOTES

Search and Seizure - Probable Cause

An arrest warrant or summons may issue if it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Mitipok, 17 FSM Intrm. 552, 553 (Chk. S. Ct. Tr. 2011).

Evidence - Hearsay

Hearsay as is an unsworn, out-of-court statement offered to prove the truth of the matter asserted. Chuuk v. Mitipok, 17 FSM Intrm. 552, 553 (Chk. S. Ct. Tr. 2011).

Search and Seizure - Probable Cause

Since the general rule is that virtually any evidence may be considered, a police officer may

consider any evidence in determining whether reasonable suspicion or probable cause exists and the evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Chuuk v. Mitipok, 17 FSM Intrm. 552, 553-54 (Chk. S. Ct. Tr. 2011).

#### Search and Seizure – Probable Cause

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Chuuk v. Mitipok, 17 FSM Intrm. 552, 554 (Chk. S. Ct. Tr. 2011).

#### Criminal Law and Procedure – Information; Search and Seizure – Probable Cause

When, although the affiant does not identify sources of information in his affidavit, the court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred; when if the affiant obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination; when it appears from the affidavit that the officer was able to observe damage to a vehicle that the defendant caused, the court will find that probable cause existed to support the information's charges and that defendant's motion to dismiss the information is without merit and will be denied. Chuuk v. Mitipok, 17 FSM Intrm. 552, 554 (Chk. S. Ct. Tr. 2011).

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#### COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice:

On January 3, 2011, the State filed an information accompanied by an affidavit of probable cause in the case captioned above charging Boisy Mitipok with one count of assault, contrary to Chk.S.L. No.6-66, § 408, one count of malicious mischief, contrary to Chk.S.L. No. 6-66, § 506 and one count of disturbing the peace, contrary to Chk.S.L. No.6-66, § 601. On May 25, 2011, defendant, represented by trial counselor Kachie Sana of the FSM Public Defender's office in Chuuk, filed a motion to dismiss the information for lack of probable cause. The State, represented by trial counselor Dionisialynn Bernard of the Chuuk State Attorney General's office, responded with a motion in opposition on June 7, 2011. Oral arguments on the motions were heard on June 20, 2011 and trial is scheduled to commence on June 21, 2011.

Defendant argues that the Information and affidavit accompanying it fail to state a valid violation of law and so do not adequately advise the defendant of the charges against him. The State's response is an iteration of what would be needed to prove guilt at trial juxtaposed with assertions of fact representing the elements of the crimes charged extracted from the affidavit.

Rule 4(a), Chuuk Rules of Criminal Procedure, provides for the issuance of an arrest warrant or summons "[i]f it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it . . ." Rule 4(b), Chuuk Rules of Criminal Procedure, provides that "[t]he finding of probable cause may be based upon hearsay evidence in whole or in part." Rule 801(c), Chuuk Rules of Evidence, defines hearsay as is an unsworn, out of court statement offered to prove the truth of the matter asserted. A police officer may, as a general rule, consider any evidence in determining whether

reasonable suspicion or probable cause exists . . . evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004). The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Kosrae v. Jonithan, 14 FSM Intrm. 94, 97 (Kos. S. Ct. Tr. 2006). "[P]robable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation." Berman v. Pohnpej, 16 FSM Intrm. 567, 574 (Pon. 2009).

Although the affiant does not identify sources of information in his affidavit, the Court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred. If he obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination. It also appears from the affidavit that the officer was able to observe damage to a vehicle that was caused by defendant. Findings of probable cause do not require that the State make a showing of all or even any elements of the crimes charged. The Court does not find it necessary to compare the elements of all the crimes charged with factual assertions in the affidavit. It is unclear to the Court why defendant cites FSM v. Sato, 16 FSM Intrm. 26 (Chk. 2008).

The Court finds that probable cause exists to support the charges in the information and that defendant's motion to dismiss is without merit. Defendant's motion is denied.

IT IS SO ORDERED.

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